JD--70--03
Miami, FL

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

POINT BLANK BODY ARMOR, INC.,
And NDL PRODUCTS, INC.

Cases: 12-CA-22383
and 12-CA-22432
12-CA-22437
12-CA-22466

UNION OF NEEDLETRADES,
INDUSTRIAL AND TEXTILE
EMPLOYEES (UNITE), AFL-CIO, CLC

Jennifer Burgess-Solomon and Jill Guarascio, Esqs.,
for the General Counsel.
Joan M. Canny, Esq.,
(Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson, P.A.),
of Miami, Florida, for the Respondent.[1]
Ira Katz, Esq.,
(of UNITE),
of New York, New York, for the Charging Party.

DECISION

Statement of the Case

IRA SANDRON, Administrative Law Judge. Preliminarily, I will address a motion to recuse me in this matter, and to have another judge conduct a *de novo* hearing, filed on July 1, 2003, by attorney Harold R. Weinrich, of Jackson Lewis LLP, Vienna, Virginia, on behalf of the Respondent.[2] The motion is based on the General Counsel having provided me with a copy of the January 30, 2003, order of Judge Kenneth A. Marra of the United States District Court for the Southern District of Florida, granting the Board's petition against the Respondent for injunctive relief under Section 10(j) of the National labor Relations Act (the Act).

The standard for a district court to grant Section 10(j) relief is "whether or not the evidence, considered in the light most favorable to the Board . . . . permit[s] the conclusion that a rational factfinder might eventually rule in favor of the Board." *Arlook v. S. Lichtenberg & Co.*, 952 F.2d 367, 373 (11th Cir. 1992) (emphasis in original). Thus, the above order was not a

[1] Both Point Blank Body Armor, Inc. (Point Blank) and NDL Products, Inc. (NDL) will be encompassed by the term "Respondent. On the first day of the hearing, Allan H. Weitzman of Proskauer Rose, L.L.P., Miami, Florida, entered an appearance as co-counsel for the Respondent. On the following morning, he made an unopposed motion to withdraw, which was granted.

[2] Neither Mr. Weinrich nor any other member of his firm ever entered a notice of appearance before me.

decision that the General Counsel of the Board had met its burden of proving the Respondent committed unfair labor practices. Determining whether or not the General Counsel has carried that burden is a responsibility vested in me at the trial level, after holding a full evidentiary hearing. My findings of fact and conclusions of law herein are based solely on the proceedings that were held before me. Accordingly, the motion to recuse is denied.

This matter arises out of an order consolidating cases, consolidated complaint, and notice of hearing issued by the General Counsel on October 24, 2002,[3] as amended on December 11 (the complaint), based on charges filed by Union of Needletrades, Industrial and Textile Employees (UNITE), AFL-CIO, CLC (the Union) on July 22, and August 9, 13, and 30, and amended charges filed on September 25.

At the conclusion of the General Counsel's case, the General Counsel orally moved to amend a number of paragraphs in the complaint, to conform to the testimony of its witnesses. The Respondent's counsel objected to these amendments, other than those that withdrew allegations in the original complaint, and she requested a continuance. I denied that request and, citing *Payless Drug Store*, 313 NLRB 1220 (1994), allowed the amendments. The Respondent's counsel also requested that the amendments be reduced to writing, and finding that request reasonable as a means of avoiding any confusion, I directed the General Counsel to prepare written amendments to the complaint. The General Counsel did so, and the Regional Director also issued an amended complaint on December 11, incorporating such oral amendments.[4]

The complaint alleges the following:

1. That various agents of the Respondent listed in paragraph 4 of the complaint [5] committed numerous independent violations of Section 8(a)(1) of the Act, orally or in writing (paragraphs 5 – 12, 14, and 15).

Previous to the General Counsel's proffered oral amendments on December 6, the Respondent stipulated that all of the individuals named in paragraph 4 of the original complaint are, and at all times material have been, statutory supervisors within the meaning of Section 2(11) of the Act.[6] With regard to the two additional agents named in the amendments, Rosa Valdes was stipulated to be a statutory supervisor and agent in the earlier representation case, and Guy Louis Remy was stipulated to be such earlier in the trial.

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[3] All dates hereinafter occurred in 2002 unless otherwise indicated.

[4] GC Exhs. 30 & 37.

[5] Inadvertently omitted were the General Counsel's oral amendments alleging Rosa Valdes and Guy Louis Remy as statutory supervisors and agents of the Respondent. The complaint also contains a few minor misspellings. Thus, Ronda Graves is "Rhonda Graves," Edelvina Martins is "Etalvina Martin," and Roberto Pomalaza is "Roberto Pamalaza." I conclude that these misspellings resulted in absolutely no prejudice to the Respondent, since the identity of the individuals was patently clear.

[6] At one point in the hearing, the General Counsel, with no objection from the Respondent's counsel, amended par. 4 to change the name "Selina Castillo" to "Zalina Ali," and her title to "Supervisor of Tactical Section No. 17, Reinforcement Stitching Department." Subsequently, however, the Respondent's counsel refused to agree to stipulate that Briceno's supervisor's correct last name was Ali, rather than Castillo. The record clearly establishes her identity, and the renewed motion to amend her name was allowed over the Respondent's objection.

General Counsel's Exhibit 19(a) – (r) was received, as representing all of the documents the Respondent provided to employees regarding the Union from July 15 to date, produced in response to General Counsel's subpoena. It was stipulated that General Counsel's Exhibit 19(j) was also disseminated to employees in Spanish.

2. That the Respondent violated Section 8(a)(3) and (1) of the Act, as follows (paragraph 13):

a. Sent its employees home early on or about July 18.

b. Changed employees' scheduled work, break, and lunchtimes on or about July 19.

c. Failed to provide overtime from on or about July 19 to on or about August 12.

d. Issued Midho Cadet a written warning and sent him home early on or about August 8.

e. Discharged Sadius Isma on or about July 18, Carlos Alejandro Briceno [7] on or about August 1, and Cadet on or about August 8.

f. More strictly enforced its work rules, including rules regarding breaktimes, since around mid-July.

g. Orally warned Virginia Salazar at or around the end of July or early August.

h. Issued a written disciplinary notice to Salazar on or about August 6.

3. Since on or about August 8, certain employees ceased work concertedly and engaged in a strike caused by the Respondent's unfair labor practices (paragraph 16).

Pursuant to notice, a trial was held before me in Miami, Florida, on 10 consecutive workdays from December 2 through December 13, 2002, at which the General Counsel, the Respondent, and the Union were represented by counsel. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. The General Counsel, the Respondent, and the Union filed posthearing briefs, which I have duly considered.

The General Counsel called as witnesses 11 striking employees, as well as one Union official. The Respondent called Joseph Giaquinto, president of NDL, and 16 managers or supervisors of Point Blank, including Ronda Graves, chief operating officer. The Respondent also called five officers from the Broward Sheriff's Office, District 16, Oakland Park (BSO).

On the last day of the hearing, December 13, having heard testimony about the events of July 18 from numerous witnesses called by both the General Counsel and the Respondent, including Giaquinto and Graves and the BSO officers on the scene, I sustained the General Counsel's objection that more testimony on the same events from additional witnesses of the Respondent would have been cumulative. I allowed the Respondent's counsel to make offers or proof in lieu of testimony, and she did so. Said offers of proof included proffered testimony of Sandra Hatfield, president; and Jesse Dominguez, human resources manager, relating primarily

[7] There was no objection to the General Counsel's amendment to correct his name.

to the events of July 18.

To the extent that Hatfield is alleged in paragraph 8 of the complaint to have committed independent violations of Section 8(a)(1) by oral statements, as opposed to statements that she made in documents that are part of the record, I deem the offer of proof regarding her testimony to encompass full denials of such oral statements, even though the proffer did not contain such. Further, when other management witnesses and supervisors testified consistently with one another on other matters, I also will conclude that Hatfield and Dominguez would have testified consistently with them.

I note that neither my credibility determinations nor my conclusions would have changed had any of those additional witnesses, including Hatfield and Dominguez, testified.

Credibility resolutions are extremely important in this case, not only with regard to the numerous alleged independent violations of Section 8(a)(1), changes in working conditions, and the alleged discrimination against Isma, Briceno, Cadet, and Salazar. They are essential for deciding the motivation behind the Respondent's actions on and after July 18, when the demand for recognition was made, and ultimately, whether the strike called on August 9 was an unfair labor practice strike, providing striking employees with the rights of unfair labor practice strikers.

Credibility will be explored in more detail in specific contexts. The witnesses can be divided into four major categories: striking employees, BSO officers, management representatives, and supervisors. Of these groups, I generally give most weight to the testimony of the various officers. Their testimony was believable, for the most part consistent with one another and, although testifying from the vantage point of officers who were sent to assist the Respondent, they appeared candid and not deliberately skewing their testimony in its favor. Accordingly, I generally credit the testimony of the officers where it conflicts with that of other witnesses.

I point out that it is beyond my purview or expertise to determine the correctness of their actions, as professional law enforcement officers, in the manner they evacuated the building. The same holds true for their decision to arrest Isma for disturbing the peace, because of the employees' obstruction of a public roadway. In any event, Graves testified that she made the decision to terminate Isma before she knew that he had been arrested.

I also realize that the events of July 18 involved a large group of people and occurred in a highly charged atmosphere and that estimates of large numbers of people often vary considerably. To that extent, I do not hold against either the General Counsel or the Respondent any differences in the number of employees their witnesses testified to. As a corollary to this, exactitude being impossible, I have used something of an average in approximating the numbers of employees participating in various large-scale events.

With some exceptions, the employees who testified on behalf of the General Counsel were generally credible and consistent, taking into account that none of them speak English as their primary language and most needed a Spanish or Creole-language interpreter to be able to understand and answer questions throughout their testimony. Some inconsistencies in testimony, particularly when so many people and incidents were involved, are also natural. The General Counsel's witnesses for the most part held up well on cross-examination, and cross-examination revealed that most discrepancies between their testimony and their prior written statements were minor and immaterial.

Any weaknesses in the credibility of the General Counsel's witnesses paled in comparison with those of the Respondent's management and supervisors. Most significantly, on certain key points regarding the events of July 18, management witnesses collectively (Graves, Giaquinto, Edward Laviene, and Daniel Power) were inconsistent with the officers. Even leaving that aside, some of their descriptions of what occurred on July 18 seemed grossly exaggerated.

In contrast to the attitude of management witnesses, most of the Respondent's first-level supervisors frequently seemed strikingly reluctant to testify, at times professing an unbelievable lack of knowledge or recall on matters that one would reasonably expect they would know or remember. Whatever the motivation for this marked reticence, they did not strike me as fully forthcoming or, therefore, as fully credible. Moreover, on certain subjects, some supervisors contradicted themselves or one another. Again, in reaching these conclusions, I have taken into account the fact that most of these supervisors speak English as their second language and required an interpreter throughout their testimony.

For the above reasons, I generally credit the testimony of the General Counsel's witnesses over that of management and supervisors.

On the entire record in this case, including my observations of the witnesses and their demeanor, as well as proffers of testimony made by the Respondent's counsel on December 13, I make the following

Findings of Fact

Service of charges and the complaint

Although the Respondent raised numerous allegations of inadequate service regarding the charges and the complaint and objected to the admission of many of the formal documents contained in General Counsel's Exhibit 1, I overruled them and admitted the formal papers. As the General Counsel stated at the hearing, proof of service is liberally construed, *United States Service Industries*, 324 NLRB 834 (1997); service on counsel of charges constitutes service on the principal, *ibid*; and potential defects in services are cured by a timely served complaint. *Buckeye Plastic*, 299 NLRB 1053 (1990). Further, when single employer status is alleged, service on one company constitutes service on the other. *Il-Progresso Italia American Publishing*, 299 NLRB 270, 289 at n.4 (1990). I am satisfied from the record that both Point Blank and NDL, even if treated separately, were provided full notice of the allegations made against them in the charges and in the complaint and had full opportunity to respond to them, and thus were no way deprived of due process. Accordingly, I find the Respondent's arguments to the contrary to lack merit.

Single employer issue

The parties stipulated to the admission of the transcript and exhibits in the representation case hearing, Case 25-RC-10133 (formerly Case 12-RC-8814) (the R case),[8] regarding the issue of single employer status, and agreed that further testimony on that issue would have been cumulative and unnecessary.

[8] GC Exh. 2.

Regional Director Roberto Chavarry of Region 25 issued a Decision and Direction of Election on September 3,[9] following a hearing conducted by a hearing officer on July 26, 31, and August 1. He reviewed the facts of record therein pertaining to the issue of single employer status. In summary, he noted (at 11-12) that there was no dispute that both Point Blank and NDL were wholly owned subsidiaries of the same parent company, DHB; there was extensive direct supervision by Point Blank supervisors of NDL's employees; there was a significant integration of operations with, inter alia, NDL employees being able to transfer to Point Blank on a permanent basis with no loss of seniority or benefits, and some interchange of machines by both companies; and there was centralized control of labor relations, including a common human resources department operating under the Point Blank name, a DHB employee handbook covering employees of both Point Blank and NDL (the handbook),[10] and NDL employees' receipt of paychecks from Point Blank.

The Regional Director concluded that the record established centralized control of labor relations, common ownership, substantial common supervision, and the interrelation of operations. Citing *Grass Valley Grocery Outlet*, 332 NLRB 1449 (2000), he therefore found that Point Blank and NDL constituted a single employer. I see no factual or legal errors in the Regional Director's conclusions. In light of the parties' agreement to rely on the R case record on this matter and their waiver of the opportunity to present any new or additional evidence before me, I hereby adopt his findings and conclusions on the issue of single employer and incorporate them by reference into my decision. Accordingly, I find Point Blank and NDL to be a single employer within the meaning of the Act, as alleged by the General Counsel.

The labor organization status of the Union

The Respondent has continued to dispute the Union's status as a labor organization, contending that the issue was not fully explored in the R case hearing. Arcine Rasberry, the Florida district manager for the Union, testified extensively on this matter. She has been employed by the Union since 1992.

The Union has a constitution,[11] which is adopted by all locals. Its organizational structure is the following: the International Union, headquartered in New York (the international); regional joint boards, districts; and, finally, locals. The Respondent is located under the geographic jurisdiction of the Florida district, one of seven districts within the South Regional Joint Board (the regional). There are 21 locals in the Florida district, each consisting of employees of a particular employer. The locals adopt the regional's bylaws. If a local has not yet been established, employees become members of the Union by signing authorization cards,[12] which state that the employee is accepting membership in the Union and authorizing it to represent the employee in negotiations. The Union normally makes a demand for recognition before filing a petition for recognition with the NLRB.

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[9] GC Exh. 5. On September 17, the Respondent filed with the Board a request for review, which remains pending. On September 27, following the filing of the instant unfair labor practice charges, among others, and at the Union's request, Regional Director Rochelle Kentov of Region 12 issued an order holding in abeyance further processing of the Union's petition and the scheduling of an election pending disposition of the Union's charges. GC Exh. 6.

[10] See GC Exh. 2(g), Exh. 18 ("DHB Employee Handbook Florida Operations"). P. 4 states that it is applicable to DHB and its subsidiaries.

[11] GC Exh. 24.

[12] GC Exhs. 25(a) & (b), used by the Union nationwide, even internationally.

If the Union is certified as the collective-bargaining representative of an employer, representatives of the international, the regional, and the district, along with employee representatives elected by employees, handle negotiations for a collective-bargaining agreement.[13] Once a collective-bargaining agreement is negotiated, employees vote whether to ratify it. Officers of each local are elected by bargaining unit employees. Those officers report to the business representatives and, indirectly, to Rasberry. Dues are sent to the regional, with some being returned to the local and some going to the international.

Rasberry has a staff of three business representatives and one secretary. She and one representative are on the international's payroll, and the other two representatives and the secretary on the regional's payroll. She reports to the regional. The representatives are involved in administration of the contract and in handling employee grievances, either at the second or third step, depending on the particular contract; and Rasberry herself personally participates at either the grievance step before arbitration or at arbitration, again depending on the particular contract. At earlier steps, shop stewards, elected by coemployees, handle grievances.

Employees attend district meetings, held at least once a year, and regional meetings. Members of each local elect a delegate to attend an international convention, held every 4 years. At such convention, elections are held for the international officers, and decisions are made on constitutional changes, finances, and organizational restructuring.

Section 2(5) of the Act broadly defines a labor organization as:

> Any organization of any kind . . ., in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Based on the above facts, I find that the Union, a component of the AFL-CIO, without question qualifies as a labor organization within the meaning of Section 2(5) of the Act. The organization has a constitution and bylaws and an established hierarchy; employees clearly participate, directly or indirectly, in its structure and operations; and its primary purpose is representing employees vis-à-vis their employers by negotiating and administering collective-bargaining agreements on their behalf. I find it unnecessary to say anything further on what I deem to be, both factually and legally, a non-issue.

Background

The Respondent, a subsidiary of DHP, is engaged in the production and sale of body armor and related accessories for use by governmental entities, including the United States armed forces, state and local police departments, and correctional facilities. It employed approximately 300 or so production employees prior to the strike on August 9. A majority of its production employees speak either Spanish or Creole as their native language.

The employee handbook (at pp. 9 – 10) contains provisions regarding discipline. A wide range of offenses is described as "actions that might lead to discipline, including immediate termination." A disciplinary procedure is then set out as follows:

[13] As sample contracts, see GC Exhs. 26 – 29.

If the violation of the company rules does not result in discharge, the disciplinary procedure is as follows:

1. The offending employee will be given a verbal warning by the supervisor.
2. If the same or related offense is repeated, the employee will receive a written notice of the offense from the supervisor.
3. If the same or related offense is repeated a third time, the employee will be suspended or discharged.

Any combination of warning, which violates company rules, could be cause for a bad conduct discharge. Plant/Production Manager Juan Valle testified that all verbal warnings are reduced to writing and placed in employees' personnel files.

In none of the personnel files of the four alleged discriminatees are there any records of disciplinary action, aside from records pertaining to actions alleged by the General Counsel in paragraph 13 of the complaint to be discriminatory.[14] The four employees testified that they received no oral or written warnings prior thereto.

The Respondent's counsel represented (at Tr. 142) that no employees, aside from the alleged discriminatees, were disciplined or terminated for theft, insubordination or threatening conduct in the last 2 years. Giaquinto testified about the discharge of two NDL employees, both occurring about 3 years ago. One of them was terminated for charging up "huge" long distance phone bills for personal calls and then lying about it (Tr. 1013). The other was fired for running a side-consulting job on company time and using company equipment and resources. No documentation concerning either employee was provided.

Isma was employed in the ballistics department from January 2000 until his termination on July 18. He operated a machine sewing layers inside of protective vests, under the supervision of Juan Carlos Vasquez, who was assisted by Remy. His undated semi-annual performance evaluation from the Respondent's personnel files,[15] produced in compliance with subpoena, reflects (on a rating scale of excellent, above average, satisfactory, decreased performance, and unsatisfactory) that he received an "excellent" rating in four out of six categories, a "satisfactory" in one, and no rating in the sixth. Isma testified that he never saw the document.[16]

Briceno was employed as a cutter's helper in the cutting department, under Supervisor John Jairo Castillo,[17] from December 2001 until his termination on August 1.

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[14] The only warnings contained in Cadet's personnel file, GC Exhs. 35 & 36, issued by his previous supervisor, Winston Foreman, related to a different employee, Ferdinand Cadet. The Respondent's counsel having refused to stipulate that Midho Cadet's file contained no other disciplinary documents (and, hence, none pertaining to him), I reviewed the file and took judicial/administrative notice that there were none.

[15] GC Exh. 15.

[16] The Respondent's counsel objected to the admission of the evaluation because there was no testimony that it was ever given to him. Nevertheless, inasmuch as it is a company-generated and maintained document, I overruled her objection.

[17] Hereinafter referred to as Supervisor Castillo, to avoid confusion with employee Hugo Castillo, who testified for the General Counsel.

Cadet was a tacker in Supervisor Edelvina Martins' department for about 4 or 5 months, before his termination on August 9. He started working for the Company in April 2000.

Salazar was employed by the Company for approximately 3 years as a sewing machine operator doing overalls under Martins' supervision, until she went out on strike.

Union activity in July 2002

Management became aware prior to July 15 of union organizing efforts among its employees. Hatfield made the decision to provide labor relations training for management and supervisors, and such training was conducted at the facility on July 15 and 16 by company attorneys, including Joan Canny.[18]

On the evening of July 17, approximately 150 company employees attended a meeting with union representatives at a local hotel. The employees decided that they wished union representation, and a further decision was made to present management with petitions demanding recognition or, in the alternative, that a neutral party conduct a card check.[19] Five or six employees were elected by voice vote to present the petitions. These included Isma, Salazar, and Jorge Ramos. Because Isma was the most proficient in English, the others selected him to be the spokesperson.

Turning to the key day of July 18, I heard a multitude of accounts of what took place that morning. There were natural variations in recall, and no two versions were completely identical. For reasons to be stated, I credit the accounts of the General Counsel's witnesses where they are inconsistent with management's.

According to Edward Laviene, vice president of Point Blank, management had information on the morning of July 18 that something was going to happen later that morning in connection with the union organizing effort. Thus, he testified that he was in Hatfield's office with Graves and attorney Canny when "there was some indication that something was going to be going down that day" (Tr. 1038).

At the start of the 9:40 a.m. (10-minute) break, the designated employees went to the management offices at the facility. They were followed by a large number of coworkers (approximately 100 -150), who were chanting or singing in Spanish, "Yes, we can."

At or near the management offices, the employees encountered Laviene, who was bleeding from the forehead and who went into Hatfield's office. Also on the way to the office, Ramos noticed that one of the motors from one of the tables was smoking. In the absence of any evidence of the cause of this, I decline to find that it had any connection with the petitioning employees or their activities. There is no evidence of any damage to company property that morning.

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[18] I will not recite the written instructions that these attorneys provided regarding what supervisors could and could not say to employees in matters pertaining to union representation, since what is critical is what they in fact said to employees.

[19] GC Exhs. 16(a) & (b). The unit is described in each as all full-time and regular part-time hourly-paid production, maintenance, shipping, receiving, and warehouse employees employed in Oakland Park, Florida, excluding office clericals, supervisors, managers, salaried employees, and guards and supervisors as defined in the Act.

The employees designated to present the petitions then saw Graves and Dominguez. Either Salazar or Isma held the petitions, while Isma explained to Graves in English what they were. Isma, Salazar, and Ramos testified that he stood approximately two feet away from her and spoke to her in a normal tone of voice. Graves told him that she could not accept the petitions. Isma testified that he told her it would be better for her to accept them, because it would be more difficult for her later on. Witnesses varied on whether Graves or Dominguez actually took physical possession of the petitions at that time, but it is evident that management, one way or another, received them that morning.

The employees and the others left at that point and went singing toward the parking area. There were two bells at the end of the break; the first, a signal to return to the workstation; the second, a minute or so later, to begin working. The employees were back at their workstations and had stopped chanting and singing by the time the morning break was over. Shortly after 10 a.m., employees observed many BSO officers around the facility. Announcements were soon made over the loudspeakers (in English, Spanish, and Creole) for the employees to leave and go home for the day and then return the next morning at 7:30. Additionally, some supervisors met with groups of employees and told them the same thing. Employees did not clock out that day. They were paid up until the time the last employee left (approximately 11:15 to 11:30 a.m.), even though they may have left earlier.

At the request of Lieutenant Robert Drago (the BSO officer-in-charge on July 18), Isma was called to the management officer soon after 10 a.m. Drago told him that the Company had decided to close down for the day and asked him to assist in announcing the evacuation. Isma indicated to Drago that he did not wish to do so, and he went back to his work area. Lt. Drago testified that 15 or 20 minutes later, he observed Isma raise his fists in his work area and employees chanting, contrary to Graves, who testified that when Isma left the office, he immediately engaged in fist raising.

As the evacuation proceeded, many employees sang or chanted, “Yes, we can, yes, we can.” A total of approximately 300 employees were evacuated.

On cross-examination, the Respondent’s counsel attempted to undermine Isma’s credibility by reference to certain statements he made regarding his interaction with Graves and what he did after seeing her, contained in his written statement to the Union’s attorney and in his NLRB affidavit.[20] There were a few minor discrepancies between aspects of his testimony and those statements, most relating to nuances of language (for example, whether, after speaking with Graves, he actually went out to the parking lot, or went out toward the parking lot but did not get there). Generally, however, he was quite consistent with his prior statements, and I do not find that any of those inconsistencies significant enough to undermine his overall credibility. The same holds true for the Respondent’s counsel’s similar efforts on cross-examine to impeach the credibility of Salazar and Ramos by their prior written statements. Some variances between testimony and written statements are natural; indeed, if they are identical in all respects, suspicion may raise that the testimony is scripted rather than based on genuine recall.

Additionally, I note that, for the most part, Isma and Salazar were generally quite

[20] R. Exh. 8 & GC Exh. 18. The latter was admitted only to the extent of those passages cited by the Respondent’s counsel on cross-examination.

consistent. Further, as I observed several times during the course of the hearing, Isma has attained considerable but not complete proficiency in English. Although Isma is certainly to be commended for his efforts to develop his English-language skills, his frequent attempts to answer in English made more difficult the interpreter's role as translator and, at times, led to confusion. Some of his conversations with management and the sheriff's deputies, who did not know Creole, may also have been affected by his duality of language. In this regard, I note that the statement he gave to the Union's attorney contains no certification of translation, and in the absence of indicia that it was translated from Creole, I give it less weight in light of Isma's incomplete mastery of English.

Individually and collectively, management witnesses Graves, Giaquinto, Laviene, and Daniel Power, director of marketing for all of DHP subsidiaries at the facility (who was stipulated to be a managerial employee in the R case), were not credible in relating the events of July 18 for the reasons stated below.

All of them uniformly attempted to paint the picture of a near-riotous situation that morning, at the time of the presentation of the petitions and thereafter, a portrayal that was not only unconvincing but was not supported by any of the BSO officers.

Deputy David Salsberry was the first officer to arrive (at approximately 10:50 a.m.), followed by Sergeant Forest Jacob Santalucia, Lt. Drago, and thereafter Sergeant Richard LeCerra. Significantly, Drago and Santalucia testified that when they were dispatched to the Company, it was because the Company reported information that there would be some kind of disturbance occurring at lunchtime, not because of what had occurred previously or because there was alleged to be any kind of violence or disturbance in progress. I note that Graves testified that it was not until after Drago and Santalucia had already arrived, that Supervisor Castillo came into the office and announced that there was going to be "a revolt" at lunchtime, with tables and machinery turned over (Tr. 1396). It was after that, she testified, that Drago asked if the Company could ensure everyone's safety.

None of the above officers observed or saw anything unusual when they arrived, other than seeing Laviene bleeding. In fact, Sgt. Santalucia testified that when he entered the facility, "It was just people working at that time" (Tr. 1700), and Sgt. LeCerra testified that when he arrived, the employees were working, and he heard no commotion or even any noises coming from them. Graves herself conceded on cross-examination that once the morning break was over, she heard "Just work noises. Everything was relatively quiet" (Tr. 1548).

Management witnesses testified that Lt. Drago recommended that the facility be closed for the day and the employees be evacuated, and that management accepted his recommendation. However, their testimony was directly contradicted by Drago, who unequivocally testified that he made no recommendations but explained the alternatives and left the decision up to management. When they told him they wanted to evacuate, he then carried out their wishes. In any event, Graves and Hatfield made the ultimate decision. Drago testified that management's decision to proceed with evacuation was made prior to Isma being brought to him to solicit his cooperation. However, Graves testified that the decision to evacuate was made after Isma did not cooperate with Drago and allegedly incited other employees.

All of the officers testified that the evacuation went smoothly, and none testified about observing any violence or hearing any threats during that process. In contrast, Graves testified on cross-examination that she observed "violent actions" during the evacuation (Tr. 1561) and that the main sewing room was "chaotic" (Tr. 1433).

Aside from being contradicted by officers on key points, Grave's struck me as somewhat evasive on cross-examination, and her testimony suffered from serious internal inconsistencies. Despite her testimony that after the petitions were presented, there was an atmosphere of great fear, she testified that she went by herself to get Isma and Salazar to speak with Lt. Drago, even though Wayne Kolbeck, director of quality and engineering, and Valle argued that it was not safe for her to do so. I do not doubt her loyalty and commitment to the Respondent; however, I do not find it believable that she would have knowingly subjected herself to potential physical harm.[21]

Giaquinto was overtly belligerent throughout his testimony and exhibited marked hostility toward the entire hearing process. This was best reflected by his continuing failure to follow my repeated directive not to argue with the General Counsel when he was asked questions on cross-examination. The animosity he displayed leads me to have serious doubt about his sincerity in objectively relating what he witnessed on the morning of July 18. Moreover, his testimony that people were "shrieking" in the customer service area at or after the time the petitions were presented (Tr. 970-971, 991) strikes me as unbelievable, as does his testimony that after the deputies arrived, employees were "going crazy in the hallway" and "making a huge ruckus" and that everyone was "in a panic" (Tr. 976, 979). Not one officer even remotely supported this account.

Laviene testified that he received what he perceived to be an emergency page to go to Hatfield's office that morning, that he hurried there from his office, and that when he approached double doors in the corridor on the way to her office, he was knocked unconscious and hit his head. He testified incredibly that he had no idea how this happened and answered, "No," when asked if he knew how he was rendered unconscious. On cross-examination, he was specifically asked whether the door had hit him in the head, to which he replied, "I don't know what happened" (Tr. 1059). Aside from Laviene's professed lack of knowledge seeming peculiar on its face, his claimed ignorance of what occurred was contradicted by the testimony of both Sgt. Santalucia and Deputy Salsberry. Santalucia testified that Laviene told him he (Laviene) hit his head when he walked or came into the office, and Salsberry testified that Graves and/or Dominguez and even Laviene himself told him that morning that Laviene hurt his head and was rendered unconscious when he ran into the door. Accordingly, I find that Laviene's injury was the result of an accident and was in no way inflicted by anyone else. There is no evidence that anyone was injured or even assaulted that morning.

Moreover, although Laviene testified that at the time of the presentation of the petition, the employees constituted a threatening mob on the verge of a riot, he also testified that he twice went through the crowd to go to the bathroom to wipe his head, and that both times he used an obscenity and pushed his way through. I find it incredible that he would have done this had he genuinely believed that a near-riot situation existed. In light of these reasons that I find Laviene to be an unreliable witness, I need not determine whether anything he might have said to a newspaper reporter should be considered to further militate against his credibility.[22]

Power's depiction of Isma in the sewing area, after the presentation of the petitions, was as a menacing, "semi crouching" agitator with "possessed" eyes (Tr. 1107, 1113). Although this description might be appropriate for pulp fiction, it seemed, at best, grossly exaggerated. None of the officers on the scene that day described Isma in that fashion. They characterized his

[21] Graves' credibility was further undermined by her testimony regarding the reasons overtime was canceled from July 19 to August 12, discussed infra.

[22] See GC Exh. 13.

behavior and attitude as being, at worst, uncooperative, but none even hinted that he was anything like the demonic figure drawn by Power. In fact, Sgt. LeCerra, the officer who had the most contact with Isma, testified that Isma caused no problems when he was arrested and was "very polite" (Tr. 1311). Indeed, one of the reasons LeCerra released Isma after he was issued a citation, rather than taking him to jail, was due to his good conduct during the arrest process.

I also note that Power on cross-examination frequently claimed lack of recall or knowledge, in contrast to the unequivocal testimony about Isma on direct examination. Moreover, although Power testified about the great fear of customer service representatives, he also testified that he told the two employees working for him that they were free to stay or leave and that they were not evacuated when the other employees were. Finally, despite his alarmist description of the atmosphere created by the prounion employees at the facility, he admitted on cross-examination that he was able to pass through the crowd presenting the petitions without any problem.

For the above reasons, I do not credit management's version of what occurred that morning where it differs from that of the General Counsel's witnesses.

The arrest and termination of Isma

After leaving the building, employees congregated outside and continued to chant, "Yes, we can." Isma and others were instructed by BSO officers that they could not stay there but had to leave. Isma moved his car and participated with about a large number of employees in a demonstration, which resumed in a parking lot belonging to apartments located across the street from the facility. The streets were blocked off by sheriff's deputies, in an effort to prevent incoming cars from exacerbating traffic congestion in the area. Sgt. LeCerra observed the crowd and determined that Isma was its leader. Concerned about the street being blocked, he concluded that the crowd was engaged in unlawful assembly. For that reason, he arrested Isma for breach of the peace. He testified that Isma's arrest had nothing to do with any conduct on company property. LeCerra took Isma to the Oakland Park Sheriff's Station, issued him a citation, and then drove him back to the company's premises.

Upon returning to the facility at approximately 2 p.m., LeCerra, at the behest of Graves, issued Isma a no trespass warning and confiscated his company identification badge.[23] Isma testified that he saw Graves and Dominguez at the gate and that the latter handed him his discharge paper.[24] Isma asked why he was being terminated, and Dominguez replied, that during working hours, Isma and other coworkers stood up and started singing, "Yes, we can." Isma responded that it was not during worktime but on breaktime. Graves then said that it was during Isma's worktime.

Graves testified that she made the decision to terminate Isma because his conduct that morning had been threatening to her and to other employees and because, instead of cooperating with the police, he "went out and did the excited opposite" by inciting others (Tr. 1446-1447). His arrest played no role in his discharge because she did not find out about it until after the decision was made to terminate him.

No one other than Isma was arrested that day, and the record does not establish that any other employee has been arrested at or near company premises since then.

[23] See R. Exh. 7, the police report.

[24] GC Exh. 17.

Changes in Security after July 18

The General Counsel does not allege the Respondent's changes in security measures violated the Act. However, inasmuch as the Respondent contends that security matters played an important part in the changes it implemented in employees' schedules and in the cessation of overtime, the subject is relevant to this proceeding.

During the day on July 18, management met with representatives of the BSO and Vanguard security. As a result, new security measures were instituted on July 19. Whereas employees previously could enter the building through any of four doors, they now could use only one entrance. Two security guards checked employee badges, to make sure they were valid, and used a "hand wand" (such as that used at airports) to inspect for weapons. Graves testified the "wanding" was instituted at Vanguard's request, since its personnel do not carry arms. Additionally, six others security guards and four BSO patrols were posted at various places.

Meetings with small groups of employees were conducted in Hatfield's office on the morning of July 19, to explain the new security measures.

Because of delays and inconvenience resulting from the new security measures, management decided on July 19 to open a second entrance.

Wands were discontinued the week of July 22 or the week of July 29, and the number of security guards was similarly reduced during the same week. Inside security guards were later discontinued and the number of BSO details reduced. To the present, Vanguard maintains security for outside the building.

Changes in hours after July 18

Prior to July 19, all employees worked from 7:30 a.m. to 4 p.m., took 10-minute morning and afternoon breaks at the same times, at 9:40 a.m. and 2 p.m., respectively. Half took their ½-hour lunchbreak at 11:30 a.m.; the other half at noon.

According to Graves, security stated that too many employees took their breaks at one time and recommended that the morning and afternoon breaks be staggered, and she made the decision to accept that recommendation. The aim was to have an equal number of employees on break at each of the breaktimes. There was no change in the lunch hour schedule.

As set out in Respondent's Exhibit 21, the new morning breaktimes were as follows: interceptor shipping room, 9:30 – 9:40 a.m.; sewing room two, 9:45 – 9:55 a.m.; sewing room one, 10 – 10:10 a.m.; and sewing and cutting room, 10:15 – 10:25 a.m. The afternoon break was similarly staggered. On July 19, these changes were communicated to employees through their supervisors and by loudspeaker announcements in English, Spanish, and Creole. The announcements further stated that breaks were to be taken in an area where no one was working, to avoid potential interference with production. Graves testified that this merely reinforced a preexisting policy and that employees could continue to visit other areas during worktime, such as in route to the bathroom. Further, she explained, when employees all took their breaks at the same time, this was not an issue.

Graves testified that she did not have employees clock out on July 19, "because we

were already in a tense situation" (Tr. 1476). Everyone was paid from 7 a.m. to 4 p.m., because some employees worked up to 11 hours. Graves further testified that employees did not talk much day, but there was whispering, and she observed them to be engaging in what seemed to be a deliberate slowdown.

Starting on July 19, supervisors' reporting and leaving times were extended, at the suggestion of security, according to Graves, to 6:30 a.m. to 5:30 p.m. She and Hatfield decided on July 21 to continue these extended hours.

On or about July 21, Hatfield and Graves decided that, in addition to opening a second entrance, employees' hours of work should be staggered to alleviate the inconvenience that was resulting from implementation of the new security system. Accordingly, commencing on or about July 22 or 23, half the employees worked from 7:30 a.m. to 4 p.m., the other half from 8 a.m. to 4:30 p.m. These changes were communicated to employees through their supervisors and by a memorandum posted at the timeclocks.

Cessation of overtime from on or about July 19 to on or about August 12

The Respondent stipulated that from on or about July 19 through on or about August 9, it temporarily eliminated overtime for all employees.

Regarding overtime, Graves testified that prior to July 18, there was overtime work during the regular workweek, generally from 4 p.m. to 6 or 8 p.m.; on some Saturdays; and on occasional Sundays. As many as 60 to 70 percent of the employees would stay for overtime work during the regular workweek; normally less than 50 percent on Saturdays, and only about 20 employees on Sundays.

Graves testified that she and Hatfield determined on July 19 that the workload did not require that the Company be open on Saturday, July 20, and supervisors were told to communicate this to employees. Graves and Hatfield met on July 21 and decided to eliminate overtime. They based this on additional costs resulting from enhanced security and the longer hours being required of supervisors, and their feeling that they could not insure employees' safety during overtime because of the lower ratio of supervisors to employees compared to regular work hours. In light of her testimony that supervisors' hours were extended until 5:30 p.m., I do not see how that last proffered reason makes sense, at least for regular weekday overtime.

Graves also testified that overtime was to be discontinued until management was "positive that we could maintain a safe situation or until the production workload required it" (Tr. 1487). I note that no documentation was produced to substantiate a reduced workload and that there is no evidence that any violence ever occurred inside the facility at any time on or after July 18.

Graves testified that in the days following July 18, management determined that they were running only 20 to 25 percent of normal efficiency, because of a deliberate slowdown among the employees. For this reason, she and Hatfield discussed the possible need to get more of the work done by subcontractors. Yet, she testified that from July 19 to August 9, the Respondent fulfilled all of its contractual obligations to customers without having to resort to any increase in subcontracting. Most incredulously, she testified that the need to transfer work to subcontractors went away completely when employees walked out on August 9, the day after Cadet was fired. According to Graves, 50 to 80 employees walked out, while 200 to 230 remained. How, 50 to 80 employees out of a total of 250 to 310, using her figures, could have

caused a 75 to 80 percent decline in performance is beyond my comprehension. Similarly, how the alleged problems in production could have been alleviated by the loss of 50 to 80 employees is also unfathomable.

Significantly, absolutely no records of any kind were produced by the Respondent to establish that there was any kind of slowdown or decline in work, and Graves testified that no supervisors reported to her any particular employees alleged to be participating in slowdown activity.

The termination of Briceno on August 1

In the cutting department in which Briceno worked under Supervisor Castillo, there were four Gerber machines, operated by computer, which made the ballistics or covers. On each machine, there was an operator and a helper, who distributed material. Briceno was a helper. It was stipulated that Briceno's personnel file contains no disciplinary documents other than those relating to his termination on August 1.

As detailed hereinafter, Briceno testified that in mid-July, he had a conversation with Supervisor Castillo regarding the union button Briceno was wearing. Castillo testified that, prior to August 1, he had seen Briceno wearing a union sticker but could not recall the date.

On the afternoon of August 1, Briceno testified, he punched out at his usual time of 4 p.m. From the wastebasket, he took two pieces of material (7 by 5 inches), to make pouches in which to put the knives he used to cut material on his machine at work.[25] When I asked him if this material could have been used for anything made by the Company, he candidly replied that it could have been used for a collar or a legs cover.

As Briceno left the building, with the material in his hand and uncovered, Castillo and his assistant, team leader Hector Cruz, were sitting outside.[26] Briceno went to his truck in the parking lot, put the material inside, and then waited for his wife, who got off at 4:30 p.m. About 5 to 10 minutes later, Castillo came over. He asked Briceno what he had taken from the Company. Briceno showed him the material. Castillo asked who gave it to him. Since it was from the garbage, Briceno replied, he had not asked for it. Castillo then asked if Briceno knew that he should not have taken material out of the Company. Briceno repeated that it was from the garbage. Castillo took the material from him and left.

Approximately 10 to 15 minutes later, Castillo returned with Dominguez, who asked Briceno why he had taken the material. Briceno once more responded that it was from the garbage. Castillo then told Briceno that he was fired. Briceno asked if it was because of the (ACTION) button, and Castillo said no. Castillo asked him to sign a paper, but he said he would not, because he did not know English. Castillo's version of what was said out in these two

[25] The Respondent contends that Briceno took 10 sheets of camouflage material. See R. Exh. 17. The police report prepared by Deputy Cox (R. Exh. 15) states that the sheets measured 18 inches by 34 inches (R. Exh. 15). However, it was stipulated at trial that the material forming the basis for R. Exh. 17 was 19" long, 6" wide, and 2-1/2" high. The exact measurements of what he took are not critical to my conclusions regarding his termination.

[26] Castillo testified that Cruz reported to him that he had seen Briceno walk out of the building with a package under his arm that looked like camouflage. Team leaders were stipulated to be statutory supervisors in the R case. Thus, at least one supervisor observed Castillo carry the material out of the building.

conversations in the parking lot was not inconsistent with Briceno's.

The next morning, Briceno went to the human resources department to get the paper translated. There, Dominguez told him that Hatfield did not want to see him inside the Company, that he was fired for thievery. Later that morning, when Briceno was outside the facility with other strikers, BSO Deputy William Cox noticed him wearing his company identification badge. Cox checked with Hatfield, who told him that Briceno had been fired yesterday and that she wanted to make a police report and prosecute him for stealing company property. Based on what was told to him, Cox prepared an arrest report.[27]

Briceno testified that leftover or otherwise unusable materials went to the garbage, as opposed to material cut wrong by the machine and correctable by hand cutters. He was not aware of any rule prohibiting employees from taking such materials out of the building. Prior to August 1, he took material from the trash for personal use, such as to clean his windshield. Briceno also observed many other employees take scraps of material from the trash, for such purposes as cleaning machines, spills, and glasses, and he saw them take such material out of the facility in view of supervisors. Prior to August 1, he was not aware of any rule prohibiting employees from taking such materials out of the building, and he never heard any supervisors say that it was prohibited.

Salazar, Ramos, and employee Castillo all testified, consistently with Briceno, that they were not aware of any rule prohibiting employees from taking scraps of cloth material, including camouflage, from the premises and making items of personal use, such as aprons, scissors' pouches or bags, chair cushions, and foot wipes. They further corroborated Briceno's testimony that employees commonly wore or carried such items around the facility in plain and open view of supervisors, who said nothing. None of them stated that employees needed to obtain permission from a supervisor before taking scrap materials, from either the trash or work areas.

Salazar was shown four items, photographs of which constitute General Counsel's Exhibit 21. She identified them as being examples of personal items she had seen employees carry or use at the facility. It was undisputed that all of these items were made of company material; indeed, during the hearing, the Respondent's counsel asked for a recess to make a police report on stolen property and indicated that she would request that the police seize the items from the General Counsel (Tr. 319, et seq.). One item was a small sealable bag with valero top. Salazar identified it as being made of material used for interceptors in Briceno's department and testified that she had seen other employees in his department carry similar bags.

Ramos also testified that employees (and supervisors) made personal items such as aprons and pouches from scraps of camouflage. He further testified that employees once every l or 2 months asked him for cloth for such personal uses, with Supervisor Castillo being present in the immediate area, at times, and saying nothing. Employee Castillo testified without controversion that in October 2001, he made a pouch in which to carry scissors and knives. He wore it at work "all the time" (Tr. 522) and took it home at the end of each day. Supervisors Ali and Castillo saw it but said nothing to him.

Supervisor Castillo seemed noticeably ill at ease during his testimony, during which he attempted to distance himself from the decision to terminate Briceno. As described below, he did the same thing when he spoke with Briceno and other employees about the termination.

[27] R. Exh. 15.

Had Briceno committed a serious breach of company policy, as claimed by the Respondent, I would not expect Castillo to have demonstrated such discomfort about the discharge. Castillo was also somewhat evasive, especially on cross-examination, and portions of his testimony struck me as unbelievable.

Castillo testified that when he was informed by Cruz that Briceno had taken material from the facility, he went to talk with the purchasing manager, because this was the first time in 2 years that he had a situation like that. I find this testimony suspicious when Castillo had not yet even seen what Briceno took and in light of credited testimony that employees did make certain items out of camouflage for their personal use at the facility.

Castillo further testified that after he took the material from Briceno, he went to see Dominguez, who told him to see Valle. Castillo did so. Hatfield was with Valle. When Castillo related the incident, Valle said he should be fired for stealing. Either Valle (Valle's account) or Hatfield (Castillo's account) stated that the Company had "zero tolerance."

Castillo subsequently attempted to distance himself from the decision to discharge Briceno. Thus, he told Mrs. Briceno that the people over him, Valle and Hatfield, had made the decision to terminate her husband. Although page 2 of the documentation pertaining to Briceno's termination [28] states that the decision to terminate him was made by Castillo, his supervisor (Valle), and the president (Hatfield), Castillo testified on cross-examination that this was incorrect, that he did not play a role in the decision but was only present when it was made. Indeed, he testified that he made no recommendation at all. Valle testified that he made the decision to terminate Briceno.

Castillo's testimony about what he asked Briceno to sign was difficult to accept. He testified that he asked Briceno to sign page 1 of General Counsel's Exhibit 32. However, this is a payroll action form that contains no place for an employee signature. Moreover, Castillo testified that when he asked Briceno to sign the page, it could have been blank.

The following morning, Castillo held meetings with the employees he supervised, telling them that the rules of the Company had to be followed, including the rule that they could not take anything out of the Company without asking for permission.[29] He made it clear that if the employees needed something, they should ask; the answer might be "yes," but they had to ask. This is somewhat different from the Respondent's contention that employees could not take company material from the premises and, on the contrary reflects that they were permitted to do so.

Later that morning, Hatfield told Castillo that she was going to make a police report. Castillo testified that when he reported the incident to Hatfield and Valle on the previous afternoon, neither one mentioned anything about filing such.

On cross-examination, Castillo conceded that he has seen employees wearing items made from material cut in his department, mainly aprons, and that he has seen employees wearing camouflage shorts. His testimony that he did not know if that camouflage was made from company material is not credible; I would expect a supervisor to be familiar with the material used in his department, particularly when it is a rather specialized fabric. He also

[28] GC Exh. 32.

[29] I do find credible his explanation that he did not use the word "stealing" in telling employees why Briceno was fired, because stealing is "a very ugly word" (Tr. 2043).

testified that employees have used scraps of material to cover their heads for rain or to wipe perspiration from their foreheads.

It is significant that there is no evidence that any employee other than Briceno has ever been fired, or even received lesser discipline, for taking material from the facility. When Briceno went out to the parking lot, he made absolutely no effort to conceal the material he was taking, even though at least one supervisor clearly observed him. Had there been a policy in effect against this, such conduct would have been unexplainably foolish. Moreover, Castillo's testimony leads me to conclude that he did not consider Briceno's conduct to have warranted termination. Accordingly, I credit the testimony of Briceno and the other General Counsel's witnesses regarding the company policy concerning the use of scrap material by employees for personal items.

The suspension and termination of Cadet of August 8 & 9

On July 8 or 10, Cadet began wearing a union button daily at work and also wore a union sticker or insignia. His supervisor, Martins, testified that she observed him wearing a union button in mid- or late-July.

There was one bathroom for women and one for men. Cadet testified that he went to the restroom at about 2 p.m. on August 8. When he returned, Martins was sitting on his chair, and Valle came to the section. Martins told Valle that Cadet had spent 10 minutes in the bathroom. Cadet responded it had not been 10 minutes. Valle instructed Cadet to follow him. Valle told him to wait in an area by a corner of a wall, and Valle returned with Dominguez. Valle told him to sign a paper and to go home. Cadet replied no, that he did not know what he was signing, and Valle again told him to go on home. Cadet left without punching out. On cross-examination, he seemed somewhat evasive in explaining why he did not punch out, indicating that it was because he had not finished working, and Valle had told him to leave.

In this regard, employee Lisiame Joseph, on cross-examination, affirmed the statement in her NLRB affidavit that she heard Valle tell Cadet to punch out, go home, and return the next morning, but that Cadet said he would not punch out because he did not know what he had done wrong.[30]

The next morning, as Cadet was reporting to his work area at about 8 a.m., Valle called him over. They went outside the building, where Valle asked for his badge and said he was fired. Cadet asked why, and Valle replied that it was because Cadet did not respect him. Cadet asked how, to which Valle responded, "It's because I asked you to sign, and you refused to

[30] I consider this to reflect somewhat negatively on Cadet's overall credibility, more so than his inability on cross-examination to remember much about the August 7 meeting, on which he was not questioned on direct examination. There is nothing in the record showing that anything about the August 7 meeting was contained in his three-page affidavit to the NLRB, so it could not have been used for impeachment. The same holds true for Joseph, who was asked about the same meeting only on cross-examination but had little recall. Again, the record does not reflect that anything concerning this meeting was mentioned in her affidavit. I note that the General Counsel appropriately objected to the Respondent's counsel going beyond the scope of direct examination but withdrew those objections when the Respondent's counsel threatened to subpoena these two individuals as her own witnesses. In order to facilitate the hearing and to avoid inconveniencing Cadet and Joseph by requiring them to return on a later date, I allowed the Respondent's counsel to question them concerning the August 7 meeting.

sign" (Tr. 611). When Cadet went in to get his water bottle, Dominguez followed him and stated that he was being fired. Cadet asked for a termination letter. The two of them went to Dominguez' office, where Dominguez stated he was being fired because he had spent 10 minutes in the bathroom. Graves entered the office. Through Remy, she told Cadet that they did not have to keep him any longer and that a termination letter was in the mail. Cadet subsequently received a termination letter, signed by Dominguez, stating simply that, "As per our conversation today you are hereby terminated."[31]

Salazar, Ramos, and employee Migdalia Ameneiro testified that no permission from a supervisor was required to go to the bathroom, no rule on the amount of time that an employee could spend in the bathroom, and no limitation on the number of times in a day that an employee could use the bathroom. Salazar testified that the only time that Martins, her supervisor, ever said anything on the matter was when too many women (four to five) were using the bathroom at the same time, and she would tell them to hurry up. Ramos testified that he suffered from apparently chronic sickness to his stomach and had to spend 20 minutes in the bathroom two or three times a month. Supervisor Castillo never said anything to him about it. Ameneiro testified that she saw many employees spend 15 minutes or more in the bathroom on a regular basis.

Graves' testimony was consistent with the General Counsel's witnesses with respect to employees not being required to ask their supervisors for permission to go to the bathroom, and there being no limit on the length of time an employee can spend in the bathroom. She testified, in fact, that the Company was and is "pretty free" in its policies regarding employee use of bathroom facilities (Tr. 1601).

Martins and Valle testified on the matter of Cadet's termination. Neither was credible.

Martins supervised Cadet for the last 3 months or so prior to his termination. She testified that she noticed Cadet went to the bathroom too often from the time he first started working under her supervision and that she reported this to Valle. Valle told her to give him verbal warnings, and that is what she allegedly did. However, Cadet's personnel file contains no documented verbal warnings, and Valle expressly testified that all verbal warnings are documented. I find this to undermine Martins' credibility. Martins also testified that prior to August 8, she had seen Cadet taking too long to return to his workstation (presumably from the bathroom) "many times" (Tr. 2113) and that other employees had complained about this yet, again, there are no documented verbal warnings. She did testify that she otherwise considered Cadet to be a good employee.

Martins testified that on the afternoon of August 8, she observed Cadet leave his workstation, presumably to go to the bathroom. When he did not return after a little over 10 minutes, she called Valle and told him of this. I do not find believable Martins' testimony on cross-examination that she could recall no other employee ever taking 10 minutes in the bathroom prior to August 8. I further find that this inherently improbable testimony further damages her overall credibility.

Martins further testified that In Valle's presence, she told Cadet he had taken a long time to come back and his work was backed up. According to Martins, Cadet shrugged and replied, "So?" Valle then told her to give him a written warning. Cadet did not respond. According to Valle, Cadet laughed and, swaggering, said "only 10 minutes" (Tr. 2190). Valle told Cadet that

[31] GC Exh. 23.

he was being very disrespectful with his supervisor and told Martins to fill out a warning paper. Cadet got upset, asking why he was being given a warning and whether it was because of the Union, and Valle asked him to go to a private office to discuss it further.

Martins wrote in the commentary on the written warning issued to Cadet.[32] She testified that she originally wrote in only the first sentence, "Going to the bathroom for a period of 10 minutes every time," but after she got the document back from Valle, added, "When told made a wise remark ('only 10')."

Valle testified that Cadet had problems with his previous supervisor, Winston Foreman, and that he (Valle) transferred him to Martins' department for that reason. According to Valle, when working for Foreman, Cadet argued a lot, left his machines for long periods of time, and made frequent mistakes but did not want to accept them. A review of Cadet's personnel record, however, reflected that it contained no warnings of any kind from Foreman, even though Valle testified that all verbal warnings are documented. This greatly undermines Valle's credibility on the matter of Cadet's termination and in general. I note also Martins' testimony that, other than going too often or being away too long at the bathroom, Cadet was a good employee.

Valle testified that he told Cadet that he was being given a warning for being disrespectful to his supervisor and, since he got so upset on the floor, he was being sent home for the rest of the day and should report the following morning with "a more positive attitude" (Tr. 2193). Thus, according to Valle's own testimony about what he told Cadet, the warning was for being disrespectful, not for spending too much time in the bathroom; and the suspension was not for being disrespectful, but because Cadet became upset when told he was receiving a warning. In contrast, as noted above, Martins initially put the reason for the written warning as "going to the bathroom for a period of 10 minutes every time."

Valle further testified that Cadet refused to sign the disciplinary notice and did not punch out, as Valle instructed him, but simply went out into the parking lot. Valle later observed him back inside the facility, told him he was not supposed to be there, and once more told him to punch out. Again, according to Valle, Cadet did not punch out but left.

Valle and Graves both testified that Valle went to see her the following morning and explained what had happened. Valle told her that he made the decision to fire Cadet, not only because he had been disrespectful to his supervisor but had shown disrespect to Valle by twice not punching out as he had been instructed. Graves told Valle that it was his decision.

Graves testified that Valle reported to her the following. Cadet had been "aggressive" to Martins when she asked why he had been away so long from his workstation. He told her she could not make him do anything, that the Union was in charge now. Cadet refused to sign a warning, telling Valle that Valle could not make him do anything and that the Union was taking over. I note here that neither Valle nor Martins testified that Cadet made any statements to them that morning regarding the Union, other than when Cadet asked if he was receiving a warning because of the Union. This inconsistency further undermines the credibility of the Respondent's witnesses regarding Cadet's discharge.

There is no evidence that any employees other than Cadet have ever been disciplined for anything relating to bathroom use; moreover, despite Martins' and Valle's claims that he was verbally warned in the past for such, his personnel file contains no written confirmations of any

[32] GC Exh. 33.

verbal warnings for anything. The testimony of the General Counsel's witnesses, as well as Graves, makes it clear that there was a liberal policy with regard to bathroom use, with no set limitations on length of time or requirement that an employee get his or her supervisor's permission. Nor is there any evidence that any employees other than Cadet have been disciplined for insubordination.

Warnings issued to Virginia Salazar in early August

As alleged in the complaint, Salazar received two warnings. The first was a verbal or oral warning issued by Martins in early August, in the early afternoon. There is no record of it in Salazar's personnel file. According to Salazar, Martins told her that she was working very slowly and that the Company was taking measurements of employees. An employee performing a low amount or less work would be called on it, and if it happened to Salazar again, they would send her home. Martins asked Salazar to sign something. Salazar refused, saying she was not slow and that by 2 p.m., she had sewed over 400 pockets.

Martins testified that she observed a slowdown in Salazar's productivity between July 18 and August 9 but could not specify the date. According to Martins, tickets on completed pockets showed that Salazar was doing less than before. Although Martins' testimony on Salazar's answer was a bit difficult to understand, Salazar replied to the effect that work was slowing down and she really could not do anymore. Martins testified that sewing 400 pockets was virtually impossible and that 200 was a good number.

Because of the lack of any kind of supporting documentation for the claim that Salazar's work performance dropped and the serious problems I have found with Martins' credibility in regard to Cadet's termination, I credit Salazar's account.

The second warning was issued by Valle on August 6.[33] Salazar testified that on her lunch hour, she was at the entrance to the gate, talking to two union organizers. When she returned to her department, Valle called her to his office. He told her that he was giving her the warning because she did not punch out to leave, and he asked her to sign it. She refused, stating that he was bothered because she had been talking to union organizers but that she had been on her lunch hour and had not gone outside the facility. She testified that she normally went to the parking lot during her lunch hour. The warning simply states that she was outside company premises and had not clocked out.

Valle testified that he prepared and signed the August 6 warning based solely on his observations of Salazar that day; more specifically, that he observed she walked outside into the parking lot without punching the timeclock. He stated that the rule always existed and that other employees have received verbal warnings for the same conduct. No documents were produced to corroborate this. In any event, his testimony made it clear that any such warnings occurred after the union petitions were presented to management on July 18. The record contains no evidence that prior to that date, any employees ever received discipline for conduct similar to Salazar's. In light of this, and Valle's lack of credibility with respect to Cadet's termination, I credit Salazar's version of what occurred.

The August 9 Strike

[33] GC Exh. 22. Valle testified that it was verbal warning but inasmuch as it was reduced to writing, unlike Martins' earlier warning, it will be treated as a written warning.

On the early evening of August 7, approximately 150 employees and union representatives met at a local union hall. The employees talked about how they were afraid because of all of the letters they had received at home from the Company and how they felt they were threatened, intimated, and questioned by the Company. It was discussed that first Isma had been fired, then Briceno. They also talked of a rumor that the Company was going to lay off 50 people. They determined that if anyone else were fired, they would go out on strike, because they had the motto that if the Company touched one employee, it touched all employees.

On the morning of August 9, after word spread among employees that Cadet had been fired, approximately 100 -150 employees walked off the job and went out on strike. The strike has continued to date.

Analysis and Conclusions

I previously addressed the issues of service of charges and the complaint, single employer, and the labor organization status of the Union.

Before turning to the alleged violations of Section 8(a)(3) and the issue of whether the August 9 strike was an unfair labor practice strike, I will first deal with the numerous allegations of independent Section 8(a)(1) violations.

Alleged violations of Section 8(a)(1)

These can be grouped in three categories: a loudspeaker announcement on July 19; documents (letters, bulletins, or posted notice); and oral statements made by management/ supervisors to employees.

Paragraph 12(a) of the complaint alleges that the Respondent, on or about July 19, by speaker system, prohibited employees from going to other departments at any time to talk to their coworkers.

It is undisputed that the Respondent made loudspeaker announcements on July 19, regarding changes in breaktimes. Employee Marleny Roman recalled she heard in that announcement that employees could no longer go to other departments, as they had done previously. Ameneiro recalled hearing that from that point on, employees were prohibited from going from one department to another unless they had to go to the bathroom. Neither Roman nor Ameneiro **could identify** the voices of the particular individuals who made the announcement (in English, Spanish, and Creole). Graves testified that it was announced, consistent with existing policy, that employees could not go on their breaks to areas where other employees were working; they could still visit other areas, such as those en route to the bathroom.

I do not find the evidence strong enough to conclude that the Respondent in the announcement "prohibited employees from going to other departments at any time to talk to their co-workers. . . ." Clearly, the primary purpose of the announcement was to advise employees of changes in breaktimes, and it is only logical to conclude that the matter of employees going to other areas would have been in the context of breaktimes, as contended by Graves. I believe that Roman and Ameneiro were sincere in testifying about their recall, but I believe that Graves' version was more probable. As she stated, in the past all employees took breaks at the same time, so the issue of employees on break visiting employees on worktime would not have arisen. In any event, a policy against employees on break talking to employees

on worktime would seem justifiable as a means of avoiding potential disruption of the latters' work. Accordingly, I recommend dismissal of this allegation. I will later address whether the change in scheduled breaktimes itself violated Section 8(a)(3) and (1), as alleged.

The Respondent promulgated and sent to employees' homes a number of letters or bulletins, which are alleged to have constituted threats or solicitation to withdraw support for the Union. All were in English, Spanish, and Creole.

A. Paragraph 8(b) and (c) allege that Hatfield, on or about August 2, via a memo,[34] threatened employees with layoff and with transfer of work.

This memo stated, in part:

> This is to inform our employees that the Company will not tolerate the "slowdown" activity that certain employees have been engaging in, because the Company cannot operate its business and meet its obligations to its customers. Therefore the Company is making arrangements to transfer work to outside contractors and is making preparations to lay off employees. Employees who engage in the slowdown activity will be selected first for layoff.

As discussed earlier, Graves testified about an alleged slowdown, but no documentation of any kind was provided to substantiate that such a slowdown occurred. In any event, Graves testified that during the period July 19 through August 9, when overtime was suspended, the Respondent fulfilled all of its contractual obligations and did not need to resort to any increase in subcontracted work. Thus, there was insufficient evidence proffered to demonstrate any kind of slowdown and, based on Grave's own testimony, I find that the memorandum was factually inaccurate and not predicated on any legitimate business considerations. In the absence of a demonstrated bona fide business justification, it must be concluded that the memorandum was promulgated and distributed with the intention of threatening employees with retaliation because of their union activities and had a coercive effect. **Cf.** *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618-619 (1969); *Harrison Steel Castings Co*., 293 NLRB 1158, 1159 (1989) (predictions of a plant shutdown are unlawful unless carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrate probable causes beyond its control). Accordingly, I find the Respondent violated Section 8(a)(1) by threatening layoffs and transfer of work.

B. Paragraph 8(f) alleges that Hatfield, on or about August 28, via a letter,[35] threatened employees that they no longer had jobs because they had been permanently replaced.

In this letter, Hatfield discusses the status of the strikers. After stating that the strikers have not been fired and are still employees, the letter goes on as follows:

> Does that mean the strikers still have their jobs at the Company?
>
> No. Employees have a right by law to strike, and we respect that right for the small number of our employees who have decided to go on strike. But the law gives the Company the right to replace the strikers with new employees, so that the Company can get the work out and keep the customers satisfied. The Company has now filled all of the jobs of the strikers with replacement workers.

[34] GC Exh. 19(q).
[35] GC Exh. 19(i).

> Will the new employees have to give up their jobs if the strikers want to come back to work?
>
> No. The new employees we have hired at Point Blank are permanent replacements.
> . . . .

Whether these statements were lawful depends on whether the strike was an unfair labor practice strike. I will return to this particular allegation hereinafter.

C. Paragraph 8(g) alleges that Hatfield, on or about August 15, via a letter,[36] solicited employees to withdraw their support for the Union.

The letter enclosed two postcards and stated:

> The attached post-cards give you a chance to tell your views privately to the union. What you do with the cards is your choice.
>
> If you signed the union card and you want your card back, send the enclosed "**Cancel My Card**" post card. The union does not have to give you the card back, but is (sic) worth a try.
>
> If you are tired of being harassed and pressured by the union and wish the union would go away and not bother you any more, please send the "Go Away" post card. You have the right to express your opinion.

An employer may lawfully assist employees in the revocation of their authorization cards within certain circumscribed parameters. The idea of withdrawal must be initiated by employees, and the employer cannot be engaged in a broader course of conduct designed to discourage employee support for a union. In other words, the atmosphere cannot be tainted by the employer's commission of unfair labor practices. *University of Richmond*, 274 NLRB 1204 fn. 6 (1985); *Jimmy-Richard Co.,* 210 NLRB 802 (1974).

Here, there is no evidence that any employees ever initiated the subject with management or supervisors. Moreover, even aside from consideration of any other unlawful conduct by the Respondent, the Respondent's earlier August 2 letter contained unlawful threats of layoffs and transfer of work. Thus, this letter concerning revocation of authorization cards occurred in the context of a situation created by the Respondent in which employees would have tended to feel imperiled (i.e., could lose their jobs) if they did not revoke their cards. See *Mueller Energy Services,* 333 NLRB 262 fn.1 (2001). I conclude, therefore, that the Respondent violated Section 8(a)(1) by unlawfully soliciting employees to withdraw their support for the Union.

D. Paragraph 12(b) alleges that the Respondent, in or around the end of August, via a posting outside its facility, threatened employees that they no longer had jobs because they had been permanently replaced.

About a week after the strike began on August 8, the Company posted a "Notice to our striking employees," on the company fence (General Counsel's Exhibit 20). It stated, in English,

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[36] GC Exh. 19(g).

Spanish, and Creole, that most positions held by striking employees had now been filled with permanent replacements. Further, those who wished to be considered for unfilled openings or for future openings could place their names on a preferential recall list at the NDL reception door.[37]

As with the August 28 letter, whether this was violative of the Act hinges on a determination of whether the strike was an unfair labor practice strike, which I will subsequently discuss.

I now turn to oral statements made by management/supervisors that are contended to constitute violations of Section 8(a)(1). I will start with those attributed to management, beginning with Hatfield and going down the management chain.

A. Paragraph 8(a) alleges that President Hatfield, on or about July 25, threatened employees with loss and removal of work.

Employee Castillo testified that on the morning of July 19, he overheard a conversation between Hatfield and Supervisor Ali, in which Hatfield told Ali that work should be picked up and taken out to other companies. After this, Ali came over to him and said there was the possibility that there would be no more overtime. Castillo asked her why, and she replied, "It was because of the Union, and . . . the Union had sent letters to our company's clients, and the work had slowed down because of that motive" (Tr. 515).

I find that Hatfield's statement to Ali, even if meant to be overheard by employees, cannot be construed as threatening or coercive, either expressly or implicitly. It simply was a statement of action devoid of any articulated motive and lacking any implicit connection to the employees' union activities. Therefore, I do not find that it supports a violation of the Act, and I recommend that this allegation be dismissed. I will hereinafter address Castillo's subsequent conversation with Ali.

Paragraph 9 (d) and (e) alleges that Hatfield, on or about August 9, impliedly promised employees wage increases and promised to change employees' start times as a reward for their disavowal of the Union.

Joseph testified that Hatfield and Valle met with her department's employees at about 4 p.m. on August 9, after a number of employees had already gone out on strike. Valle translated into Spanish what Hatfield said in English, and Remy translated into Creole (Joseph's native language). Hatfield stated that she was happy they had stayed and continued to work for her. Hatfield then said, "I had promised you all a raise 2 years [ago], and now I will see what I can do" (Tr. 642). Employees told her they did not like working until 4:30 p.m., and Hatfield stated that the ending time was being changed to 4 p.m.

Remy testified about that meeting. Although he seemed quite nervous, he struck me as sincere. Thus, he testified that he refused Dominguez' request to translate in connection with Cadet's termination. Remy testified that he did translate for Hatfield at the end of the workday on August 9. Through him, she thanked employees who had stayed. He recalled that a Creole-speaking woman, whose name he did not know, told Hatfield that working until 4:30 was difficult for her, and that Hatfield replied that she was going to change the schedule to 4 p.m. Thus,

[37] Having Point Blank strikers apply at the NDL reception door is consistent with a determination that Point Blank and NDL constitute a single employer.

Remy, as an agent of the Respondent, admitted that Hatfield, after thanking employees for not going on strike, stated, at their request, that she would change their schedules. He further testified that Hatfield did not ask him to translate anything concerning pay raises.

I credit Joseph's testimony on what Hatfield said. Remy substantiated much of her testimony. She was detailed and consistent with her Board affidavit, as came out on cross-examination. She appeared quite candid, as reflected in the fact that her testimony that Cadet was expressly instructed to punch was not favorable to his case. Accordingly, I credit her testimony regarding Hatfield's also stating that the employees might be receiving a pay raise.

Therefore, I find that that the Respondent violated Section 8(a)(1) by promising wage increases and changes in hours to employees as a reward for their refraining from union activities.

Paragraph 15(a) and (b) allege that Remy committed identical violations as those attributed to Hatfield in paragraph 8(d) and (e). Inasmuch as Remy was acting solely as Hatfield's interpreter and conduit, merely translating what she was instructing him to say to employees, I do not find that he committed violations of Section 8(a)(1) separate and distinct from her and, accordingly, I recommend that these allegations as to him be dismissed.

B. Paragraph 11 alleges that Plant/Production Manager Valle committed a number of violations of Section 8(a)(1), occurring between July 22 and July 25, and including unlawful interrogation of employees about their union activities and support, promising wage increases, and threatening discharge, plant closure, loss of work, or layoff.

Employee Castillo testified that on the afternoon of July 25, Valle called several employees, including Castillo, to his office. Valle stated, "I am not going to talk bad about the Union. But the only thing is that because of the Unions, many companies have closed down." (Tr. 516). He repeated that he was not going to talk bad about it, "but all I want to say is that I want you to think carefully because the join the Union. Because of the Union the company is losing contracts, and the work is slowing down, and possibly also because of the Union . . . the company may also have to close" Tr. 516-17). He also said that if the Company wanted to speak to employees, they could not, because the employees had already started talking with the Union.

Valle testified that in July, he had a conversation with five Spanish-speaking operators in Ali's department, including Castillo. He could not recall the exact date or time of day. Using General Counsel's Exhibit 19(q) as a framework, he talked about how the Union could not guarantee a salary increase or other benefits, would have to negotiate, and if no agreement on a contract were reached, the only way out for the Union would be to go on strike. He further explained that they could lose their jobs if the strike were illegal. Employees, especially Castillo, asked questions. Castillo asked why the Company did not try to solve problems with the Union. Valle testified that he stated he could not negotiate with the employees and would not accept the Union until they went to elections. He denied stating that the Company might have to close down. On cross-examination, he added that he told employees they could lose unemployment benefits and possibly be permanently replaced if they went on strike.

Salazar also testified that on the morning of July 25 or 26, the Company called employees in groups to an office. Valle spoke to her and five others. He asked them, one by one, "Have you filled out union cards?" and "Has the union gone to your home?" (Tr. 308). When Valle came to Salazar, he stated that he was not going to ask her anything. She asked why, and he responded that she was part of the Union, to which she replied that yes, she

wanted a union. Valle told the employees that they had all the rights, and the Union would not bother them. He also said, "You're not going to have any more work if a union comes in here, because we are going to lay off people, the production is going to slow down" (ibid).

Valle denied having any conversations with Salazar about the Union, stating that "she became a very strange person" after the Union appeared in front of the building (Tr. 2210). This testimony strikes me as strange.

According to employee Rosana Mencia, Valle, on the morning of July 23, came to her work area. He and Martins spoke to each other in English. He then asked Mencia what the Union was offering and if she knew that the Union would take money from her. He asked if she had gone to union meetings, and she said yes. He stated that she was a good employee and that Martins said she would be one of the first employees to receive a salary increase, but at the moment there was no money for that increase. Mencia replied that she was no dummy and was seeing both sides. He said he did not her to leave or lose any work and to think about it. He asked her to sign a paper that he had spoken to her, but she said no. He again told her to think about it.

Valle testified that he had one conversation with Mencia about the Union, in late July or August, after Martins told him he needed to talk to Mencia because she was "confused" (Tr. 2211). Valle testified that he called Mencia into an office and asked why she was confused. She replied that she did not know. He told her to analyze the information that was given to her and what the Union was promising. She asked him what happened with the salary increase, and he responded that he could not discuss salary increases with her or any employee until the union problem was resolved.

As noted previously, Valle was not a credible witness in other areas of testimony. His testimony that he initiated his conversation with Mencia—because Martins said she was "confused"--sounded contrived and unbelievable, as does his testimony that Salazar became "very strange" after the Union came on to the scene. Therefore, I credit the versions of Castillo, Salazar, and Mencia over Valle's.

I find therefore, that Valle, on or about July 23 and 25 or 25, unlawfully interrogated employees; on or about July 23, promised wage increases; and on or about July 25 or 26, made sundry threats regarding loss of employment, in violation of Section 8(a)(1).

C. Paragraph 10 alleges that Quality Assurance Manager Pomalaza, on or about August 9, threatened employees with discharge; and on or about July 19, prohibited employees from going to other departments at any time to talk to their coworkers.

Roman testified that on the morning of August 9, Pomalaza had a conversation with her and employee Juana Zapata in an office at the facility. He asked Roman if she was going to go out on strike. She replied that she was. He then stated that after 3 days, the strikers would no longer be considered employees of Point Blank. Zapata was uncertain whether Roman was present or already on strike, but she testified about a discussion Pomalaza had with employees in which she asked whether striking employees could be fired if they missed a certain number of days, to which Pomalaza replied they could be fired after 3 days.

Roman and Ameneiro further testified that after the loudspeaker announcement on July 19, Pomalaza told them and other employees that they could not go to other areas, as they had been able to previously, and he also spoke of the changes in hours.

Pomalaza testified that he had a conversation with Roman on the morning of August 10. She stated that her husband was calling her to join the strike, and he replied that he would respect her decision. He did not specifically deny stating that striking employees could be fired after 3 days.

Based on Roman's and Zapata's credible and uncontroverted testimony, I find that Pomalaza told them that striking employees could be fired after 3 days. Even if the strikers were only economic strikers, they were not subject to discharge. *NLRB v. International Van Lines*, 409 U.S. 48 (1972). Accordingly, Pomalaza's statement constituted an unlawful threat of discharge in violation of Section 8(a)(1).

As I mentioned regarding the July 19 loudspeaker announcement, I believe that statements about not going to other areas were made in the context of the Respondent's implementation of staggered breaktimes and referred to not going on break to areas where other employees were on worktime. I conclude that Pomalaza's statements were made in the same context. Even if the actual change in breaktimes violated Section 8(a)(3) and (1), such statements were not threatening or coercive in and of themselves but on their face had a reasonable business justification. Therefore, I recommend dismissal of this allegation.

D. Paragraph 14 alleges that Rosa Valdes, Hatfield's executive assistant, on or about July 19, interrogated employees about their union activities and support, and impliedly threatened employees with plant closure.

Roman testified that on or about July 19, when announcements were made over the loudspeaker about changes in hours, Juana Zapata fainted. Roman took her to the restroom. Valdes later came. She first asked how Zapata was. Then, she asked if they had signed union cards and if they had not, they should think about it well, because, "the owner had a lot of money, and . . . he could leave there any time that he wanted" (Tr. 677).[38] Zapata had virtually no recall of what occurred, stating that she was confused about what had happened.

Valdes' description of the events of the morning of July 18 mirrored those of Giaquinto, Graves, and other management officials and was similarly laden with hyperbole. Thus, she described employees during the 9:40 a.m. break as "elephants running" and testified that to her it looked like "a riot" (Tr. 1872, 1874). She testified that, even before she observed employees with Graves, she called 911 and reported a riot and the need for immediate assistance, but none of the officers testified that was related to them when they were dispatched. Valdes further testified that she tried grabbing Graves and pulling her back, because Salazar was "not more than a couple of inches away" from Graves' face (Tr. 1878), testimony uncorroborated by anyone else, including Graves herself. Accordingly, I find that Valdes was not a credible witness.

Valdes could not recall any employees fainting during the week of July 18, and thus offered no specific testimony about the above incident, other than to deny that she ever asked any employee in the restroom whether she signed a union card. She did not deny making the statement attributed to her by Roman, that the owner had a lot of money and could, essentially, close the facility if he wished.

In light of my reservations about Valdes' overall credibility, her lack of recall of the July

[38] Roman's testimony on direct examination about what Valdes said concerning the owner was somewhat ambiguous, but on cross-examination she cured this ambiguity.

19 incident, and her failure to specifically deny the above statement, I credit Roman's detailed account of their conversation on July 19 and find that Valdes not only stated that the owner was in a position to close the facility but also asked employees whether they had signed union cards. Accordingly, I find that Valdes, on or about July 19, interrogated employees about their union activities and made a threat of plant closure, thereby violating Section 8(a)(1).

E. Paragraph 5 alleges that Supervisor Castillo, in or around late July, threatened employees with lower wage rates, plant closure, and unspecified reprisals.

Ramos testified that on the afternoon of July 19, 20, or 21, Supervisor Castillo held a meeting with seven Spanish-speaking employees in the cutting department (he was uncertain of the exact date, consistent with his affidavit to the General Counsel). Castillo then had a meeting with the English-speaking employees in the department. Ramos was making $7.15 an hour. Castillo stated at the meeting that the Union only wanted their money, that the Company could close at any time and start to negotiate from $5.15 an hour. One of the employees contested Castillo's comments, but Castillo did not say anything further. Briceno also attended a portion of this meeting but had to leave early.[39] He recalled Castillo stating that the Union only wanted to make money to pay high salaries and would ruin the Company. His account was not inconsistent with Ramos' and since Ramos stayed for the whole meeting, was credible and had a generally clearer recall, I credit Ramos' full version.

Castillo recalled a meeting with his employees concerning the reading of a company bulletin regarding the Union (General Counsel's Exhibit 19(q)), which in sum states that the Union cannot guarantee a pay increase or more benefits. He could not recall the exact date. Ramos was there for the entire meeting, but Castillo left early. He testified that he just read the bulletin. On cross-examination, he testified that employees did ask questions about the promises the Union was making. He told them they could believe in those promises if they wanted but that they were only promises. He further testified on cross-examination that he talked with employees in groups of two. They brought up union promises. He testified that he did not tell them the Union was not going to live up to its promises. He told them they had the right to choose. However, he admittedly made the comment that everything had to be negotiated and that "[w]e could start – they could start from the bottom" (Tr. 2037). He then appeared to pull back from that statement by testifying that he just told employees "exactly what Ms. Canny told me" (Tr. 2038).

Castillo denied saying at any time that the Company would or would not close. He did concede that he said that if the Union kept sending letters to customers questioning the Company's quality of work, the latter might pull their contracts.

Briceno testified that one morning at the end of July, he had a one-on-one conversation with Castillo, in a room where mechanics repair things. Briceno was wearing a UNITE button. Castillo stated that just because he (Briceno) was wearing the button did not mean that he sympathized with the Union but that if he were Briceno, he would not wear the button because the Company was going to defend itself and would not let the Union get in. If credited, this would constitute a threat of unspecified reprisals.

On direct examination, Castillo testified that he had one conversation with Briceno, in

[39] As I noted on the record (Tr. 483), Briceno was not fully reliable in terms of recalling dates, but his testimony clearly reflects that Ramos and he were talking about the same meeting.

which Briceno brought up the union button. However, on cross-examination the next day, he directly contradicted his earlier testimony by denying that he had any conversations concerning the Union with Briceno alone. He denied saying at any time that the Company would not let the Union come in.

As indicated earlier, Castillo's testimony about the termination of Briceno was not fully consistent or credible. He also directly contradicted himself on whether he had any one-on-one conversations with Briceno about the Union. Accordingly, I credit Ramos and Briceno on their accounts of what he said, over Castillo's denials.

I find, accordingly, that Castillo, in or around late July, threatened employees with lower wage rates, plant closure, and unspecified reprisals, and so violated Section 8(a)(1).

F. Paragraph 6 alleges that Supervisor Ali, on or about July 25, threatened employees with plant closure; and on or about July 19 and 25, threatened employees with loss and removal of work.

I previously set out employee Castillo's testimony of what he overheard Hatfield and Ali say between themselves on the afternoon of July 25 at his work area, and what Ali said to him afterward about work being taken to other companies, because, "of the Union. It's the Union's fault that we have to take this material and take it out to other companies" (Tr. 520). She further stated that it was possible the Company might have to close because of the Union.

Ali was not a credible witness. Throughout her testimony, she appeared very reticent and, at times, evasive. Further, portions of her testimony were utterly unbelievable and contradictory.

Thus, despite Graves' testimony that supervisors were instructed to communicate changes in overtime and changes in hours to their employees, Ali testified that she never talked to employees about such changes. She could not remember how employees were informed that overtime was discontinued. Moreover, although she supervised about 22 employees, she testified that none of them ever asked her any questions about the changes made in hours.

She further testified, on cross-examination, that she did not speak to employees about the supervisor bulletins, even though she attended management meetings of supervisors conducted by Hatfield and attorney Canny. On redirect examination, she was asked why she did not talk to employees about those bulletins. She responded that she could not speak Spanish and Creole. I asked how she communicated with employees, and she replied, "My – they would say about two words in English, and I would say maybe one word in Spanish, but to conversate (sic) and talk about something like a letter, I can't" (Tr. 2162).

On recross examination, she was asked, "[H]ave you every given them any directives as to what you want them to do as their supervisor?" Her response, incredibly, was, "No." I asked how employees knew what she wanted them to do. She replied, "I show them and I have samples. I point, and I – as I said they speak very few English, and I speak very – not – maybe one or two words in Spanish, and I work (sic) four years with them, and they understand me" (Tr. 2163). I cannot believe that the Respondent would have retained Ali as the supervisor of 22 or so employees if, indeed, she has had such a limited ability to communicate with them as she initially claimed.

Further, despite her testimony that she could not converse with her employees about a letter, she later testified that employees told her they had received letters from the Company.

She testified, incredibly, that the employees did not tell her what the letters said and that she did not ask. If the employees did not want to ask her questions about the letters or discuss their contents, why would the employees have even told her that they were received?

I find that Ali's testimony was unbelievable and contradictory. Accordingly, I do not credit her denials of the statements Castillo attributed to her. I further find, therefore, that Ali, on or about July 25, threatened employees with plant closure and loss and removal of work in violation of Section 8(a)(1). The evidence does not support a conclusion that she committed any violations on July 19.

G. Paragraph 7 alleges that Supervisor Frias, on or about July 19, threatened employees with layoff; and on or about August 8, impliedly promised salary increases to employees if they disavowed the Union.

Employee Maria Abreu testified that on July 19, half an hour after the loudspeaker announcement, Frias told all employees in the department that they were going to lay off approximately 40 to 60 employees and that the Company was going to move to another location. Abreu was unable to provide an adequate foundation for her alleged conversations with Frias in which Frias said there would be no overtime, which conversations are not alleged in the complaint. However, Abreu's testimony about what Frias told her on July 19 was consistent with what Roman testified Zapata told her on the same date, and I credit this portion of Abreu's testimony.

On August 8, Abreu testified, Frias had a conversation with her in the afternoon. Frias told her she (Frias) knew she had the union button on and wanted to be part of the Union but to realize that she was a single mother and that the Union could not do anything for her. She further told Abreu that she could get her a salary increase and to think about it very well. This testimony also appeared credible.

Frias' professed lack of memory on so many matters, especially for a supervisor of approximately 35 employees, was not believable and seriously undermined her credibility. For example, Frias testified that she could not remember if employee start and end times changed after July 18, or if overtime stopped after July 18. Moreover, despite Graves' testimony about management providing supervisors with training prior to July 18, Frias could not recall attending any such meetings. When asked if she had any conversations with any employee about union buttons or stickers, if she had any conversations about the Union with Abreu at any time, or if she had any conversations with any of her employees about the Union at any time, her uniform answer was, "I don't remember" (Tr. 1771 - 1773). Even if Frias' were being fully truthful, her very poor recollection would render her an unreliable witness. Accordingly, I do not credit her specific denials of 8(a)(1) statements attributed to her by Abreu.

I therefore find that Frias, on or about July 19, threatened employees with layoff; and on or about August 8, impliedly promised salary increases to employees if they disavowed the Union, and that she thereby violated Section 8(a)(1).

H. Paragraph 9 alleges that Supervisor Martins interrogated employees on or about July 15 and July 22 or 23; on or about those same dates, threatened employees with plant closure; on or about July 18, threatened to send employees home if they continued to engage in union activities; on or about July 22 or 23, promised better working conditions, medical insurance and wage increases; in or around late July, promised employees promotions; and, on or about July 24 or 25, prohibited employees from wearing union attire.

Salazar testified that on the afternoon of July 23, she asked Martins why there was no overtime that day, to which Martins replied that there was no work. Salazar asked whether it was because there was no work or because of employee support for the Union. Martins replied, "Take it anyway you like" (Tr. 306). Even if Salazar's account is fully credited, Martin's response was too ambiguous to constitute a violation of Section 8(a)(1), and it was Salazar who initiated mention of the Union.

Ameneiro testified about a number of conversations with Martins. Martins could not remember any one-on-one conversations with Ameneiro, and she did not specifically deny making the following statements attributed to her by Ameneiro, which statements therefore have gone unrebutted.

Ameneiro testified that shortly before going into work on July 15, she signed a union authorization card outside. Soon after she was at work, Martins asked her if anyone outside had given her any paper to sign for the Union. Martins went on to say that if anyone gave her such a paper, she should not sign it, because If the Union came in, the Company would close down. This constituted a threat of plant closure. However, inasmuch as Martins asked only if Ameneiro had been given anything and not whether she had or had not signed it, I do not find that this was unlawful interrogation.

Ameneiro testified that on July 20 or 22, during an afternoon break, she had a conversation with Martins at Martins' desk. Martins asked if she had signed anything for the Union, and Ameneiro replied, yes. Martins asked if she was crazy and if she really knew what she was doing, and stated the Union was no good. Further, Martins said, "Like I told you many times before, if the Union [comes] into the company, the company [is] going to close down." (Tr.561). Ameneiro responded that in her native country (Cuba), the union had been good. Martins offered to explain what the Union was about, but Ameneiro replied that she was not interested. Here, Martins questioned Ameneiro about her union activity and threatened plant closure, thereby violating Section 8(a)(1).

Ameneiro further testified that on July 22 on break, Martins asked another employee, Pilar Toledo, to explain to Ameneiro about the Union. Toledo stated that the Union was very bad. Martins testified that she merely overheard Ameneiro and Toledo. However, even fully crediting Ameneiro's account, it is not clear whether the other employee was pushed to talk to Ameneiro or did so on her own volition. Even if the former, only an opinion was expressed by one employee to another, and I find no coercion. Accordingly, I find no violation from this incident.

Mencia testified about several conversations with Martins. Martins testified that she "talked to" but did not "converse" with Mencia about the Union between July 18 and August 9 (Tr. 2131). She testified that, "[Mencia] was already inclined with the union. So I asked her, I asked her how she felt with the union . . . ." (ibid). If Martins already knew, quaerere why she asked her. I find this to constitute an admission of interrogation.

Martins did not specifically deny any of the statements attributed to her by Mencia in the following conversations. I have previously found Martins an unreliable witness with regard to Cadet's termination and that she committed violations of Section 8(a)(1) in speaking to Ameneiro. Accordingly, I generally credit Mencia's accounts, with certain exceptions.

According to Mencia, on July 18, when she returned to her workstation after the petitions were presented, Martins told her that if she had to get up one more time, Martins would send her home. Mencia testified that Martins told the same thing to other employees. Inasmuch as

Martins' statement was made immediately following the employees' participation in union activity, I find that such statements constituted an unlawful threat of adverse action for engaging in further union activity.

Mencia also testified that on July 21, Martins came to her workstation. Martins told her that (Mencia) knew a lot about managing machines and could be her assistant. Mencia laughed, and Martins winked at her. This testimony was not rebutted. However, I find it too ambiguous to conclude that it constituted a promise of benefit for abandoning the Union and, hence, that it does not support a violation of Section 8(a)(1).

On the morning of July 22, Martins had a conversation with Mencia and her coworkers. Martins was crying. She told Mencia that she had to talk to her. Mencia asked as a friend or as an employee, and Martins replied as a friend. She asked Mencia if she were in the Union, and Mencia told her yes. She told Martins not to blackmail her with crying, because she felt as though Martins were faulting her. Mencia accompanied her to a private area. There, Martins said she was a very good employee and would be one of the first persons to receive a salary increase. She also said that Mencia had all the benefits inside the Company. Mencia asked, what benefits, saying she paid her own insurance, water was rationed, the air conditioning did not always work, and the bathrooms were not clean. Martins said that if she (Mencia) went back to her country and returned, she would always have work.

Although cross-examination disclosed that the description of this incident with Martins and Valle in Mencia's NLRB affidavit [40] did not include anything about Martins crying or Mencia using the word "blackmail," her testimony and affidavit were otherwise very consistent.

I find that, as she did with Ameneiro, Martins unlawfully interrogated Mencia about her union activities and promised a wage increase. However, Martins did not promise anything else, such as better working conditions and benefits.

On the morning of on or about July 24 or 25, Mencia testified, she was wearing her union button at her workstation. Martins told her to take off the button and remove union information from the little table on which she had her personal items, because if Hatfield came by and saw them, she would be very upset. Mencia did not remove it.

There was nothing whatsoever in Mencia's affidavit about Martins ever telling her to take off her union button and remove information from her desk. This undermines the reliability of this testimony, as does the fact that when no other employee testified that Martins or any other supervisors ever engaged in this particular type of conduct. Accordingly, although the incident may have happened at some point, I find the evidence insufficient to accept this portion of Mencia's testimony.

On or about July 31, Mencia had a conversation with Martins about union letters. Martins stated that she knew Mencia was going to union meetings and that if she was a union member, to tell the directors of the Union to stop sending letters to customers of the Company, because business was slowing down. Mencia replied that she did not know anything about those letters but would talk to them about it. I do not find that Martins simply statement about business slowing down rose to the level of an implied threat. On cross-examination, Mencia added that Martins had told her that the Company possibly might close down and move elsewhere, but she did not lay an adequate foundation to support a violation.

[40] R. Exh. 9.

Based on the above, I find that Martins, on or about July 15 and 20 or 22, interrogated employees about their union activities and support; on or about July 15 and 20 or 22, threatened employees with plant closure; on or about July 18, threatened to send employees home if they continued to engage in union activities; and, on or about July 22 or 23, promised wages increases to discourage employees' union activities and support. I recommend dismissal of the remaining allegations in paragraph 9.

Alleged violations of Section 8(a)(3)

The complaint alleges that the Respondent violated Section 8(a)(3) and (1) not only with regard to action taken against employees Isma, Briceno, Cadet, and Salazar, but by certain actions affecting all employees, to wit, sending employees home early on July 18, changing employees' scheduled work times, breaktimes, and lunchtimes on July 19; and failing to provide overtime to employees from on or about July 19 to on or about August 12.

The starting point for analysis of allegations of unlawful discrimination is *Wright Line*, 251 NLRB 1083 (1980), enfd., 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S. 989 (1982). Under *Wright Line*, the General Counsel has the initial burden to persuade, by a preponderance of the evidence, that protected activity was a motivating factor in the employer's action, and this may be shown by either circumstantial or direct evidence. More specifically, the General Counsel must show that the employee was engaged in protected activity, that the employer had knowledge of this activity, and that the activity was a motivating or substantial reason for the employer's action. Once the General Counsel has met its burden, the burden of persuasion shifts to the employer to show by a preponderance of evidence that it would have taken the action even in the absence of the protected activity. See *NLRB v. Transportation Corp.*, 462 US 393, 399-403 (1983); *Kamtech, Inc. v. NLRB*, 314 F.3d 800, 811 (6th Cir. 2002).

Regarding the actions that affected all employees, there is no question that a large percentage of the total number of employees engaged in protected activity on July 18 and that the Respondent had knowledge thereof.

As to the individual discriminates, Isma and Salazar were at the forefront of the employees who presented the petition to Graves on July 18 and were considered by Graves to be the leaders of the prounion group. Briceno and Cadet openly wore union insignia, which their supervisors saw prior to the disciplinary actions taken against them.

In July and August, management and supervisors committed numerous independent violations of Section 8(a)(1), including interrogation, threats, promises of benefit, and solicitation to withdraw from the Union, thus showing express animus. Further, with respect to the alleged individual discriminatees, none had any record of disciplinary action prior to July 18, and the timing of the subsequent discipline imposed against them also strongly suggests antiunion motive.

Accordingly, for all of the following actions, relative to both the employees as a whole and to the named alleged discriminates, I find that the General Counsel has shown that a motivating factor in the Respondent's actions was union activity and, therefore, has established a prima facie case of unlawful discrimination.

The next step under *Wright Line* is determining whether the Respondent has demonstrated that the same actions would have taken place for legitimate reasons, absent the

employees' protected conduct.

Sending employees home early on July 18

The employees who presented the petitions on July 18 during the morning break returned to their workstations at the conclusion of the break. Any disruption of their work after the break ended at 10 a.m. was due to the arrival of a number of BSO officers and, very shortly thereafter, announcements that the facility was being evacuated. As noted, the officers who arrived at the scene observed nothing of the ordinary.

Management reported to the BSO officers that there were rumors that at lunchbreak, employees were going to turn over tables and machinery. If management had had objective evidence or even a well-founded fear that violence or damage to property was going to take place, then evacuating the premises would have been unquestionably justified. An employer is certainly not required to wait until there is actual violence or damage before taking steps to protect persons and property. However, the only event occurring that morning that precipitated the early closing was the employees' en masse presentation of the union petitions to Graves during their breaktime, clearly protected activity. No violence or damage to property occurred at that time or at any time that day. Moreover, it seems somewhat illogical for the prounion employees to have planned disruption at lunch time when they engaged in no such conduct following their presentation of the petitions on the morning break but rather returned to work.

I have to conclude in these circumstances that the Respondent did not have legitimate business bases to shut down early on July 18 but rather used the alleged fear of later damage as an excuse to clear out the facility and to retaliate against the large number of employees who presented the union petitions.

Therefore, I find that by sending employees home early on July 18, the Respondent violated Section 8(a)(3) and (1) of the Act

Changes in scheduled worktimes, breaktimes, and lunchtimes on or about July 19

As I mentioned earlier, the Respondent's changes in security measures after July 18 is not alleged as an unfair labor practice. Nevertheless, inasmuch as the Respondent has contended that the changes in hours and breaktimes came about as a result of changes in security, the latter must also be addressed.

Thus, Graves testified that staggered breaktimes were instituted at the suggestion of the private security service (Vanguard) and that starting times were staggered to alleviate the inconvenience resulting to employees from the new security procedures.

It is significant that after the implementation of rigorous new security measures on July 19, including limiting employees to only one entrance, as opposed to the four previously used, and the "wanding" of entering employees, such measures were almost immediately scaled back. Thus, on July 19, management decided to open a second entrance, and within a week or two, wands were discontinued and the number of security guards was reduced. Moreover, the record does not reflect that at any time on or after July 18 did the Respondent file any police reports alleging actual damage to company property or physical harm to persons inside the facility.

I also note that, as reflected by the credited testimony of employee Joseph, partially

corroborated by Remy, at least some employees did not like the new work schedule, and that Hatfield on August 9, essentially promised to reward employees who had not gone out on strike by changing their hours. This suggests that the matter of hours of work was used by management as a tool to discourage union activity.

The Respondent admitted changes in breaktimes and hours of work were made. Although Paragraph 12(b) also alleges changes in lunchtimes, the record does not reflect this.

Based on the above, I find that the Respondent has failed to demonstrate that it had legitimate business reasons to make the changes in breaktimes and hours of work and, therefore, violated Section 8(a)(3) and (1) by such conduct.

Failure to provide overtime from on or about July 19 to on or about August 12

It is not disputed that prior to July 18, there was overtime work offered to employees, both during the regular workweek, on some Saturdays, and on occasional Sundays; that as many as 60 to 70 percent of employees would stay for overtime work during the regular workweek; and that overtime was discontinued from July 19 through August 9.

Graves' testimony about why she and Hatfield decided on July 19 and 21 to discontinue offering overtime work to employees was discussed earlier. She testified, in sum, that overtime was eliminated because of increased security costs, the safety of employees could not be ensured, and a deliberate work slowdown by employees.

I will not repeat here all of my previous comments questioning the credibility of her testimony in this area. Most unconvincing was her testimony regarding the alleged decline in workload caused by the alleged slowdown. She testified that in the days following July 18, management determined that they were running only 20 to 25 percent of normal efficiency because of a deliberate slowdown among employees, yet the Respondent fulfilled all of its contractual obligations to its customers during the period from July 19 to August 9, without having to resort to any increase in subcontracting. Most incredible was her testimony that the need to transfer work to subcontractors went away completely when there was a walkout of 50 to 80 employees on August 9. It is beyond my comprehension how these 50 to 80 employees could have caused a 75 to 80 percent decline in employee performance, or how their departure on August 9 could have obviated the need for subcontracting.

I additionally note the suspicious timing of the resumption of overtime—the first working day after the strike was called on August 9. Graves did not explain how management could have determined so quickly that there was a need to reinstate overtime.

Most significantly, absolutely no documentation was provided to establish that there was any decline in work on or after July 18 that diminished the need for continued overtime.

Accordingly, the Respondent has failed to demonstrate that valid business considerations justified its temporary cessation of overtime for the period from on or about July 19 to on or about August 12, and I find that such action violated section 8(a)(3) and (1) of the Act.

Stricter enforcement of work rules since in or around mid-July

This allegation (paragraph 13(f)) is apparently based on Pomalaza's statements to Ameneiro and Roman.[41] As discussed earlier, Pomalaza apparently made these statements in the context of changes in breaktimes. Although the changes themselves violated Section 8(a)(3) and (1), I have not found that the statements were facially threatening or otherwise coercive. In any event, no evidence was provided to establish that the Respondent in fact engaged in stricter enforcement of work rules following the advent of the Union's organizing campaign in mid-July. Therefore, I recommend that this allegation be dismissed.

The actions against individual employees

The Respondent's counsel represented that no employees aside from alleged discriminatees Isma, Briceno, and Cadet were disciplined or terminated for theft, insubordination or threatening conduct in the last 2 years.

The handbook provides for progressive discipline, starting with a verbal warning and proceeding to written warning, and then suspension or discharge. Valle testified that all verbal warnings are reduced to writing and placed in employees' personnel files.

The Respondent's witnesses did not claim that any of the four discriminatees other than Cadet ever received verbal warnings prior to July 18. Despite Valle's and Martins' contention that Cadet had received verbal warnings, his personnel record contained no documentation of such, other than verbal warnings pertaining to another employee with the same last name.

I will now turn to the individuals named in paragraph 13.

The termination of Isma

Graves testified that she made the decision to terminate Isma because his conduct that morning had been threatening to her and to other employees and because he failed to cooperate with the police but, instead, "incited others." His subsequent arrest played no part in that decision.

I credit Isma and the other General Counsel's witnesses concerning the manner in which the petitions were presented to Graves on July 18 and their returning to their work stations at the conclusion of the morning break. For reasons previously stated, management's witnesses, including Graves, were not reliable in their depiction of events that morning. Suffice to say, her conduct in going alone to speak to Isma and Salazar on the floor soon after the presentation of the petitions belies her testimony and that of other management witnesses that she was fearful for her safety. The same holds true for Laviene and Power, who testified that they went through the crowd without any problems despite their claims that a riot-type situation existed. I emphasize once more that when the BSO officers arrived on the scene, only minutes after the break had ended, none of them observed anything out of the ordinary in terms of what employees were doing. Graves herself, in fact, conceded that once the morning break was over, she heard, "just work noises. Everything was relatively quiet" (Tr. 1548).

[41] See GC Br. at 21-22.

I find, based on the above, that Isma's actions that morning in presenting the petitions and thereafter were well within the ambit of protected activity and not removed from the pale of protection by any verbal or physical misconduct on his part.

As to the second reason she proffered for Isma's termination, Graves testified that when Isma left the office after talking with Lt. Drago and refusing to cooperate, he immediately engaged in fist raising and stirring up the employees. Drago, on the other hand, testified that he did not observe Isma rise his fists until about 15 or 20 minutes later, after announcements concerning evacuation had already been initiated. Further, although Graves contended that during the evacuation, she observed "violent actions" and the main sewing room was "chaotic" (Tr. 1561, 1433), all of the BSO officers testified that the evacuation process went smoothly and without any confrontations with employees. I therefore do not credit her testimony that Isma "incited" the employees after his meeting with Drago.

Based on the above, I find that the Respondent has failed to demonstrate that it would have terminated Isma but for his engaging in protected activity on the morning of July 18, to wit, presenting the union petitions to management. Accordingly, his termination on July 18 violated Section 8(a)(3) and (1).

The termination of Briceno

As stated earlier, I credit the testimony of Briceno and other witnesses of the General Counsel that employees commonly took scrap materials, including camouflage, to make a variety of items of personal use, including such items as aprons and scissors' pouches; that permission from supervisors was not required; and that such items were worn in plain and open view around the facility.

I do not believe that Briceno, an employee since December 2001, would have taken the camouflage material—regardless of which size it was—and carried it out of the building so conspicuously had there in fact been an enforced policy against employees removing material from the premises. Indeed, although the Respondent has contended that there is "zero tolerance" for this, his supervisor, Castillo, told other employees on August 2 that Briceno was terminated not for taking material out of the Company but because he had not asked for permission to do so; in fact, he told them that if they needed something, they should ask, and the answer might be "yes." This is not the same as a policy prohibiting removal of material. A company's shifting of reasons for discipline is indicative of discriminatory motive. See, e.g., *Central Cartridge, Inc.*, 236 NLRB 1232, 1260 (1978).

I also consider it significant that Castillo took pains to distance himself from the decision to terminate Briceno, both in terms of what he told Briceno and other employees, and during his testimony. This strongly suggests that he did not consider Briceno's conduct to have warranted such severe disciplinary action, further undermining the Respondent's contention that Briceno committed an egregious violation of company policy by stealing.

I conclude from the above that the Respondent has not demonstrated that Briceno's conduct in taking the camouflage material from the facility violated an enforced company policy. Indeed, in a plant employing 300 or so employees, no other employees have ever been disciplined for such.

Even assuming arguendo that Briceno engaged in misconduct, he had an otherwise unblemished work record, and the fact that the Respondent did not impose lesser discipline pursuant to the progressive disciplinary procedure set out in the handbook further buttresses the

conclusion that his termination was motivated by union animus and not by bona fide considerations. Although the Board does not impose on employers an obligation to promulgate a progressive disciplinary system, it has held that if an employer does maintains such a system, failure to follow it is frequently indicative of a hidden motive for imposing more severe discipline. *Fayette Cotton Mill*, 245 NLRB 428 (1979); *Keller Mfg. Co.,* 237 NLRB 712, 713-17 (1978) *Taylor Bros., Inc.*, 230 NLRB 861, 868 (1977).

Based on the above, I conclude that the Respondent has failed to demonstrate that it would have taken the action against Briceno had he not engaged in union activity by showing his support for the Union. Accordingly, his termination violated Section 8(a)(3) and (1).

The suspension and termination of Cadet

There was agreement between the General Counsel's witnesses and Graves on the Respondent's generally liberal policy regarding the use of bathroom facilities, there being no limitation on the amount of time and no need to obtain supervisory approval. It is undisputed that no employee other than Cadet has been disciplined for anything relating to the bathroom facilities, nor has any employee being disciplined in the last 2 years for insubordination.

As I previously discussed, Martins and Valle were not credible in their testimony about Cadet. Both testified that he had previously received verbal warnings for misuse of the bathroom facilities, yet his personnel file contained no record of verbal warnings, despite Valle's testimony that all verbal warnings are documented and placed in personnel files.

Although Martins originally wrote in the August 8 warning notice that it was for Cadet's "Going to the bathroom for a period of 10 minutes every time," Valle had her add, "When told made a wise remark." Valle testified that he told Cadet the warning was for being disrespectful to him and Martins, not for spending too much time in the bathroom, and that the suspension was not for being disrespectful, but because Cadet became upset when told he was receiving a warning. I find these shifting reasons to reflect a discriminatory rather than bona fide motive. See *Central Cartridge, Inc.*, supra.

I conclude from the above that the Respondent has failed to show that it would have warned and then suspended Cadet on August 8 had he not displayed his support for the Union. Therefore, his written warning and suspension violated Section 8(a)(3) and (1).

Turning to Cadet's termination the following day, Valle testified that he made the decision to fire Cadet, not only because he had been disrespectful to his supervisor but for showing disrespect to Valle by twice not punching out after he was told he was suspended, as Valle instructed him. I credit Valle's testimony, corroborated by employee Joseph, that he did tell Cadet to punch out on August 8 and that Cadet failed to do so. The first issue is whether the Respondent could legitimately discipline Cadet for not punching out after he was placed on a suspension that I have found unlawful. If he had not been unlawfully warned and suspended, the issue of his punching out would never have arisen.

Certainly, there can be situations in which an employee's reaction to unlawful discipline is so egregious that his or her misconduct justifies further disciplinary action, even if the original discipline was improperly imposed; for example, engaging in physical violence or destruction of company property. In such situations, the subsequent misconduct could be considered to give rise to justifiable discipline, even if the original action was improper. Here, however, Cadet merely failed to punch out after being suspended, a form of minor misconduct integrally connected with the improper suspension. It would amount to condonation of the employer's

unlawful conduct in imposing the suspension to find that Cadet's subsequent failure to punch out warranted his termination.

Even assuming that Cadet committed a legitimately punishable offense in not punching out, the Respondent cannot rely as a basis for his termination on the suspension which I have determined was unlawful. Therefore, the only arguably valid ground for Cadet's discharge on August 9 was his failure to punch out after being instructed to do so.

Cadet was employed since April 2000, or over 2 years, and had a good work record, based on the lack of any disciplinary documents in his personnel file. This, as well as the fact that no other employees have been disciplined for insubordination in the past 2 years, and the relatively minor impact of the misconduct, leads me to conclude that the severity of the discipline—termination—was disproportional to the nature of the offense, a further indication that the discipline was motivated by unlawful animus rather than legitimate considerations. See *Detroit Paneling Systems,* 330 NLRB 1170 (2000); *Neptune Water Meter Co. v. NLRB*, 551 F.2d 568, 570 (4th Cir. 1977).

Therefore, I conclude that the Respondent has failed to demonstrate that Cadet would have been terminated on August 9 had he not engaged in union activity by showing his support for the Union. Accordingly, as with his written warning and suspension, his termination violated Section 8(a)(3) and (1).

The warnings issued to Salazar

Martins alleged that she observed a slowdown in Salazar's productivity between July 18 and August 9 and that formed the basis for her issuance of a verbal warning to Salazar in early August. I found many problems with Martins' credibility, and no supporting documentation of any kind was furnished by the Respondent to corroborate Martins' contention that Salazar's work slowed down. Graves testified that no supervisors reported to her any specific employees they observed engaging in a slowdown.

In these circumstances, I conclude that the Respondent has failed to demonstrate that it had a bona fide reason to issue such a verbal warning to Salazar and that she would not have received it other had she not been a leading union proponent.

Valle testified that he prepared and signed the August 6 warning based solely on his observations of Salazar that day; specifically, that he observed that she walked outside into the parking lot without punching the timeclock. He alleged that the rule always existed and that other employees have received verbal warnings for the same conduct. However, no evidence of such verbal warnings was produced at the hearing, and his testimony made it clear that any such warnings were issued only after the union petitions were presented to management on July 18.

As with the earlier verbal warning, I conclude that the Respondent has failed to show that it had legitimate grounds, separate and distinct from animus directed against Salazar for her union activity, for issuing her the written warning. Therefore, the Respondent violated Section 8(a)(3) and (1) by issuing Salazar both warnings.

The status of the August 9 strike

The test for determining whether a strike is an unfair labor practice strike is whether it has been caused in whole or in part by an unfair labor practice committed by the employer.

Precision Concrete, 337 NLRB No. 33 (2001), at p. 3; *Child Development Council of Northeast Pennsylvania*, 316 NLRB 1145 (1995); *Citizens National Bank of Willmar*, 245 NLRB 389, 391 (1979), enfd. mem. 644 F.2d 39 (D.C. Cir. 1981). The Board does not calculate the relative severity of the unfair labor practice but instead considers only whether the strike was at least in part the direct result of the employer's unfair labor practice and whether the employer's unlawful conduct played a part in the decision to strike. *Central Management Co.*, 314 NLRB 763, 768 (1994); *C & E Stores*, 221 NLRB 1321, 1322 (1976). Thus, the fact that such a strike may also have economic objectives does not change its status as an unfair labor practice strike. C*entral Management Co*.

I credit the employees who testified that on the evening of August 7, they attended a large union meeting at which there was discussion of threats and other activities of the Respondent directed against the Union and its adherents. I also credit their testimony that there was discussion that Isma had been fired and then Briceno, that there was a rumor that the Company was going to lay off 50 people, and that a decision was made that if anyone else was fired, they would go out on strike.

It is undisputed that when word spread among the employees on August 9 that Cadet had been terminated, approximately 100 to150 employees walked off the job and commenced a strike outside the Respondent's facility.

I have found that the discharges of Isma, Briceno, and Cadet, as well as numerous statements made by the Respondent and its agents, constituted unfair labor practices. The strike was called in protest of these actions. Accordingly, I conclude that the strike was caused, at least in substantial part, by such unfair labor practices committed by the Respondent and therefore was an unfair labor practice strike. As noted above, the fact that employees may also have been dissatisfied with their remuneration and working conditions does not change this result.

Unfair labor practice strikers, upon an unconditional offer to return to work, are entitled to reinstatement to their former jobs, even if they have been permanently replaced and those replacements must be discharged. *Maestro Plastics Corp. v. NLRB*, 350 U.S. 270, 278 (1956); *Child Development Council of Northeast Pennsylvania,* supra.

Accordingly, I further find that Hatfield's August 28 letter (referenced in paragraph 8(f) of the complaint) and the Company's posted notice (referenced in paragraph 12(b)) violated Section 8(a)(1) by threatening unfair labor practice strikers employees that they no longer had jobs because they had been permanently replaced.

Conclusions of Law

1. Point Blank Body Armor, Inc. and NDL Products, Inc. constitute a single employer (the Respondent) engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Union of Needletrades, Industrial and Textile Employees (UNITE), AFL-CIO, CLC (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by:

(a) Threatening employees with loss of work, discharge, plant closure, or layoff, in retaliation for their union activities or support.

(b) Threatening employees with lower wages in retaliation for their union activities or support.

(c) Threatening employees with unspecified reprisals in retaliation for their union activities or support.

(d) Threatening to send employees home early if they continued to engage in union activities.

(e) Threatening unfair labor practice strikers that they no longer had jobs because they were permanently replaced.

(f) Soliciting employees to withdraw their support for the Union.

(g) Promising employees wage increases or different hours of work as a reward for their refraining from union activities.

(h) Promising employees wage increases to discourage their union activities or support.

(i) Interrogating employees about their union activities or support.

2. The Respondent violated Section 8(a)(3) and (1) of the Act by:

(a) Sending its employees home early on July 18, 2002.

(b) Changing employees' scheduled worktimes and breaktimes, on or about July 19, 2002.

(c) Failing to provide overtime work to employees, from on or about July 19 to on or about August 12, 2002.

(d) Issuing Midho Cadet a written warning and suspending him from work on August 8, 2002.

(e) Discharging Cadet on August 9, 2002.

(f) Discharging Sadius Isma on July 18, 2002.

(g) Discharging Carlos Alejandro Briceno on August 1, 2002.

(h) Verbally warning Virginia Salazar in or around early August 2002.

(i) Issuing a written warning to Salazar on August 6, 2002.

3. The strike commencing on August 9, 2002 was an unfair labor practice strike from its inception.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to

effectuate the policies of the Act.

The Respondent having discriminatorily discharged Sadius Isma, Carlos Alejandro Briceno, and Midho Cadet, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from dates of suspension or discharge to the dates of proper offers of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Cadet should also be made whole in the same manner for any loss of earnings and other benefits he suffered by reason of his unlawful suspension from work on August 8, 2002.

The Respondent having unlawfully sent employees home early on July 18, 2002, and denied them overtime from on or about July 19 to on or about August 12, 2002, it must make them whole for any loss of earnings and other benefits, computed on a quarterly basis.

The strike commencing on August 9, 2002 having been caused at least in part by the Respondent's unfair labor practice, the Respondent must offer striking employees immediate reinstatement to their former positions of employment, or if any of those positions no longer exist, to substantially equivalent positions, upon the striking employees' unconditional offer to return to work, displacing, if necessary, employees hired since on or about August 9, 2002. In view of the status of these employees, mailing copies of the notice to them would be appropriate.

The General Counsel requests an extraordinary remedy in this matter, including ordering the Respondent to supply the Union with unit employees' names and addresses, updated every 6 months, up to 1 year, or until a certification issues after a fair election; to grant the Union and its representatives, upon request, reasonable access to the Respondent's bulletin boards and all places where notices to employees are customarily posted in its facility; and to convene all employees during working time at the facility, by shifts, departments, or otherwise, and have Hatfield read the notices to employees, or at her option, permit a Board agent and/or interpreter read the notice in her presence, in English, Spanish, and Haitian Creole.

It is well settled that the Board has broad discretion when fashioning a "just remedy." *Maramont Corp.*, 317 NLRB 1035, 1037 (1995). Special remedies may be necessary to dissipate as much as possible the lingering effects of an employer's unfair labor practices to ensure that a fair election can be held. *Audubon Regional Medical Center*, 331 NLRB 374 (2000). When an employer has engaged in extensive and serious unfair labor practices when faced with a union organizing effort among its employees, the order should afford the union, "'an opportunity to participate in . . . restoration [of a fair environment] and reassurance of employee rights by engaging in further organizational efforts, if it so chooses, in an atmosphere free of further restraint and coercion.'" *Audubon Regional Medical Center* at 378, citing *United Dairy Farmers Cooperative Assn.*, 242 NLRB 1026, 1029 (1979), enfd. In relevant part, 633 F.2d 1054 (3rd Cir. 1980).

Here, the Respondent not only discharged or otherwise discriminated against four open supporters of the Union, including the two who led the employees presenting the union petitions on July 18, but took action against all employees. Thus, the Respondent closed the whole facility early on July 18 and, almost immediately afterward, instituted changes in breaktimes and hours of work, and discontinued providing opportunities for overtime work to all employees, conduct I have found was motivated by union animus. In July and August, numerous agents of the Respondent, including Point Blank President Hatfield and Plant/Production Manager Valle, committed a wide range of violations of Section 8(a)(1), encompassing threats of job loss,

interrogation, soliciting withdrawal from the Union, and promises of benefits. These unfair labor practices continued even after the strike commenced on August 9, as reflected by the notice posted at the end of August that striking employees no longer had jobs because they had been permanently replaced.

I conclude, in these circumstances, that special remedial provisions are necessary and appropriate to ensure that the employees will be able to participate in a fair election untainted by the effects of the Respondent's egregious unfair labor practices. I find that the special remedies ordered by the Board in *Audubon Regional Medical Center*, supra at pp. 380-381, would effectuate that goal.

I concur with the General Counsel that the Respondent should be required to read the notice to employees, as well as post and mail it, and that the notice should be translated into Spanish and Haitian Creole, as were the Respondent's announcements and letters and memoranda to employees. However, I will provide that the notice be read by "a responsible management official," consistent with *Audubon Regional Medical Center*, rather than requiring it be read specifically by Hatfield.

The General Counsel also requests that the Order include provisions requiring the Respondent to rescind a memorandum and letters that were the basis for finding independent violations of Section 8(a)(1). However, inasmuch as they were not policy announcements and their unlawful statements would be remedied, and in effect rescinded, by the notice to employees, I find such provisions unnecessary and will not include them in the Order.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[42]

ORDER

The Respondent, Point Blank Body Armor, Inc. and NDL Products, Inc., Miami, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with loss of work, discharge, plant closure, or layoff, in retaliation for their union activities or support.

(b) Threatening employees with lower wages in retaliation for their union activities or support.

(c) Threatening employees with unspecified reprisals in retaliation for their union activities or support.

(d) Threatening to send employees home early if they continue to engage in union activities.

[42] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(e) Threatening unfair labor practice strikers that they no longer have jobs because they were permanently replaced.

(f) Soliciting employees to withdraw their support for Union of Needletrades, Industrial and Textile Employees (UNITE), AFL-CIO, CLC (the Union).

(g) Promising employees wage increases or different hours of work as a reward for their refraining from union activities.

(h) Promising employees wage increases to discourage their union activities or support. Interrogating employees about their union activities or support.

(i) Sending employees home early in retaliation for their union activities or support.

(j) Changing employees' scheduled worktimes and breaktimes in retaliation for their union activities or support.

(k) Failing to provide overtime work to employees in retaliation for their union activities or support.

(l) Issuing verbal or written warnings, suspending, or terminating employees because of their union activities or support.

(m) In any other manner interfering with, restraining, or coercing employees in the exercise of their Section 7 rights.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Sadius Isma, Carlos Alejandro Briceno, and Midho Cadet whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(b) Within 14 days from the date of this Order, expunge from all its records, any references to the unlawful discharges of Sadius Isma, Carlos Alejandro Briceno, and Midho Cadet; the unlawful written warning and suspension from work imposed on Midho Cadet; and the unlawful verbal and written warnings issued to Virginia Salazar, and within 3 days thereafter notify the employees in writing that it has done so and that it will not use any of these disciplinary actions against them in any way.

(c) Make employees whole for any loss of earnings and other benefits suffered as a result of the early closing of the facility on July 18, 2002, and the cessation of overtime work from on or about July 19 to on or about August 12, 2002, in the manner set forth in the remedy section of the decision.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Immediately offer employees engaged in the unfair labor practice strike reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs, upon their unconditional offers to return to work, displacing, if necessary, employees hired since on or about August 9, 2002.

(f) Supply the Union, on its request made within 1 year of the date of this Order, the full names and addresses of its current employees.

(g) On request, grant the Union and its representatives reasonable access to the Respondent's bulletin boards and all places where notices to employees are customarily posted at the facility.

(h) Within 14 days after service by the Region, post at its facility in Miami, Florida, copies of the attached notice marked "Appendix."[43] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 15, 2002.

(i) Mail copies of the notice, signed by the Respondent's authorized representative and translated into Spanish and Haitian Creole, to all employees on the Respondent's payroll since July 15, 2002, who are not currently working at the Respondent's facility.

(j) During the time the notice is posted, convene the unit employees during working time at the Respondent's facility, by shifts, departments, or otherwise, and have a responsible management official of the Respondent read the notice to employees, translated into Spanish and Haitian Creole, or permit a Board agent, in the presence of a responsible management official of the Respondent, to read the notice to employees, translated into Spanish and Haitian Creole.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. July 10, 2003

IRA SANDRON
Administrative Law Judge

[43] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

JD--70--03
Miami, FL

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT issue verbal or written warnings, suspend, discharge, or otherwise discriminate against any of you for supporting the Union of Needletrades, Industrial and Textile Employees (UNITE), AFL-CIO, CLC (the Union), or any other union.

WE WILL NOT change the hours of your breaktimes or work schedules, send you home early, or deny you opportunities for overtime pay because of your union activities or support.

WE WILL NOT threaten you with loss of work, discharge, plant closure, or layoff, in retaliation for your union activities or support.

WE WILL NOT threaten you with lower wages in retaliation for your union activities or support.

WE WILL NOT threaten you with unspecified reprisals in retaliation for your union activities or support.

WE WILL NOT threaten you with being sent home early if you engage in union activities or support.

WE WILL NOT threaten unfair labor practice strikers that they no longer have jobs because they have been permanently replaced, because they have reinstatement rights by law.

WE WILL NOT solicit you to withdraw your support for the Union.

WE WILL NOT promise you wage increases or different hours of work as a reward for your refraining from union activities.

WE WILL NOT promise you wage increases to discourage your union activities or support.

WE WILL NOT interrogate you about your union activities or support.

WE WILL within 14 days from the date of the Board's Order, offer Sadius Isma, Carlos Alejandro Briceno, and Midho Cadet full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Sadius Isma, Carlos Alejandro Briceno, and Midho Cadet whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Sadius Isma on July 18, 2002, Carlos Alejandro Briceno on August 1, 2002, and Midho Cadet on August 9, 2002; the unlawful written warning and suspension imposed on Midho Cadet on August 8, 2002; and the unlawful verbal and written warnings issued to Virginia Salazar in early August 2002, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful actions taken against them will not be used against them in any way.

WE WILL make you whole for any loss of earnings and other benefits you suffered as a result of our early closing of the facility on July 18, 2002, and our cessation of overtime work from on or about July 19 to on or about August 9, 2002.

WE WILL supply the Union, on its request made within 1 year of the date of the Board's Order, the full names and addresses of all current unit employees of our facility.

WE WILL, on request, grant the Union and its representatives reasonable access to our bulletin boards and all places where notices to employees are customarily posted in our facility.

WE WILL immediately offer striking employees reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent jobs, upon their unconditional offers to

return to work, and WE WILL, if necessary, displace employees hired since on or about August 9, 2002.

POINT BLANK BODY ARMOR, INC.,
And NDL PRODUCTS, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

201 East Kennedy Boulevard, South Trust Plaza, Suite 530, Tampa, FL 33602-5824

(813) 228-2641, Hours: 8 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (813) 228-2662.